

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/1.
INTRODUCTION/401. Scope of title.

CONTEMPT OF COURT (

1. INTRODUCTION

401. Scope of title.

The contempts discussed in this title are mainly those of superior courts of record, represented for this purpose by the High Court of Justice¹.

1 The principles by which the High Court is guided apply to other courts, which, nevertheless, are regulated and limited by special statutory provisions as to contempts. See eg the County Courts Act 1984 s 118 (as amended) in relation to county courts; the Contempt of Court Act 1981 s 12 (as amended) in relation to magistrates' courts; and para 454 post. As to contempt of inferior courts see para 454 post; and as to the law of contempt in relation to tribunals see para 455 et seq post. See also COURTS; MAGISTRATES.

As to contempt of the Crown see CRIMINAL LAW, EVIDENCE AND PROCEDURE; and as to contempt of Parliament see PARLIAMENT vol 78 (2010) PARAS 1083 et seq, 1096 et seq.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/1.
INTRODUCTION/402. Kinds of contempt.

402. Kinds of contempt.

Contempt of court may be classified¹ as either (1) criminal contempt², consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced; or (2) contempt in procedure, otherwise known as civil contempt³, consisting of disobedience to the judgments, orders or other process of the court, and involving a private injury⁴.

1 The classification of contempts as criminal or civil has become progressively less important and has been described as 'unhelpful and almost meaningless' in the present day: see *Jennison v Baker* [1972] 2 QB 52 at 61, [1972] 1 All ER 997 at 1002, CA, per Salmon LJ. It has been said that, whatever its value in earlier times, the classification tends now to mislead rather than to assist because the standard of proof is the same (ie the criminal standard: see paras 414, 465, 501 post) and there are now common rights of appeal (see para 512 et seq post): see *A-G v Newspaper Publishing plc* [1988] Ch 333 at 362, [1987] 3 All ER 276 at 294, CA, per Sir John Donaldson MR. In the same judgment it was suggested that of greater assistance would be a reclassification as (1) conduct involving a breach, or assisting in the breach, of a court order; or (2) any other conduct involving an interference with the due administration of justice, either in a particular case or more generally as a continuing process: see *A-G v Newspaper Publishing plc* supra at 362 and 294 per Sir John Donaldson MR.

There remain, nevertheless, significant points of distinction between the two types of contempt (see para 404 post) and the traditional classification is maintained in this title.

See also 37 Mod LR 187.

2 As to criminal contempt see para 404 et seq post.

3 As to civil contempt see para 458 et seq post.

4 Although a civil contempt is essentially a wrong done to the person who is entitled to the benefit of the order or judgment concerned, it also involves an obstruction of the fair administration of justice, and may accordingly be punished in the same manner as a criminal contempt.

UPDATE

402 Kinds of contempt

NOTE 1--Proceedings in the High Court for contempt of court are to be regarded as civil: *Daltel Europe Ltd v Makki* [2006] EWCA Civ 94, [2006] 1 WLR 2704.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION/403. Contempt of Court Act 1981.

403. Contempt of Court Act 1981.

Until the passing of the Contempt of Court Act 1981¹, the development of the law of contempt of court had been almost exclusively through the common law. The law of criminal contempt was significantly amended by the 1981 Act; but the Act does not apply to all aspects of contempt² and, even where the Act is applicable, certain principles developed under the common law remain relevant³.

1 The Contempt of Court Act 1981 came into force on 27 August 1981: see s 21. As to the application of the Act to Northern Ireland see s 18, Sch 4 (as amended).

The Contempt of Court Act 1981 was enacted in order to implement the main recommendations of the *Report on Contempt of Court* (Cmd 5794) (1974) (the Phillimore Report) and to harmonise national law with the judgement of the European Court of Human Rights in *Sunday Times v United Kingdom* (1979) 2 EHRR 245, judgment of 27 October 1978. In this case, an injunction restraining the publication of a draft article (which canvassed in detail the issues in pending litigation between the parents of the victims of the drug thalidomide and the manufacturers of the drug) was upheld by the House of Lords (see *A-G v Times Newspapers Ltd* [1974] AC 273, [1973] 3 All ER 54, HL), but was successfully challenged by the newspaper concerned as a restriction on its freedom of expression under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (see *Sunday Times v United Kingdom* supra). The House of Lords had held that it was contempt of court to publish material which prejudged the issue of the pending litigation or was likely to cause public prejudgment of that issue and that accordingly publication of the article, which in effect charged the drug manufacturers with negligence, could constitute a contempt; but the European Court of Human Rights held that, having regard to all the circumstances of the case, including the fact that the thalidomide litigation was virtually dormant, the prior restraint imposed by the injunction was disproportionate to the legitimate aim served and amounted to an unjustified interference with the newspaper's freedom of expression.

2 Principal features of the Contempt of Court Act 1981 are: the creation of a strict liability rule (see para 410 et seq post); the enlargement of the scope of contempt in relation to jury disclosures (see paras 434, 451 post); the regulation of the use of tape recorders in court (see paras 407, 429 post); the limitation of the powers of a court to require the disclosure of sources of information (see para 408 post); the imposition of restrictions on the publication of matters exempted from disclosure in court (see para 432 post); the setting of maximum penalties for contempt and provisions for the enforcement of fines (see para 502 et seq post); and the extension of the strict liability rule to certain tribunals (see para 455 post).

3 Nothing in the provisions of the Contempt of Court Act 1981 prejudices any defence available at common law to a charge of contempt of court under the strict liability rule (see para 410 et seq post); or implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions; or restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice: s 6. See also paras 418, 421 post.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(1) IN GENERAL/404. Characteristics of criminal contempt.

2. CRIMINAL CONTEMPT

(1) IN GENERAL

404. Characteristics of criminal contempt.

Criminal contempts are distinguished by the following characteristics¹: privilege is not allowed²; the order of discharge from custody may be made conditional on the payment of costs³; and the writ of sequestration is inapplicable⁴. The prerogative of the Crown extends to the remission of a sentence for criminal contempt, but the Crown never interferes in the case of a contempt that is not criminal⁵.

Proceedings for civil contempt have been held to be civil proceedings for the purposes of the rules of admissibility of evidence⁶.

1 Formerly the most important characteristic was the absence of a right of appeal from an order of committal for criminal contempt. A right of appeal is now conferred in cases of criminal and civil contempt by the Administration of Justice Act 1960 s 13 (as amended): see para 512 post.

2 See para 519 post.

3 See para 524 post.

4 See para 492 post.

5 See para 525 post. As to the prerogative of the Crown generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq; and as to the granting of pardons see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 823 et seq.

6 As to evidence see para 501 post. There are dicta to the effect that civil contempt is a common law misdemeanour: *Danchevsky v Danchevsky (No 2)* (1977) 121 Sol Jo 796, CA, per Lawton LJ; *Linnett v Coles* [1987] QB 555 at 561, [1986] 3 All ER 652 at 656, CA, per Lawton LJ; *Dean v Dean* [1987] 1 FLR 517 at 523, [1987] 1 FCR 96 at 103, CA, per Neill LJ. See also *Jelson (Estates) Ltd v Harvey* [1984] 1 All ER 12 at 20, [1983] 1 WLR 1401 at 1411, CA, per Dillon LJ; *Lee v Walker* [1985] QB 1191 at 1201, [1985] 1 All ER 781 at 785, CA, per Cumming-Bruce LJ. But cf *Scott v Scott* [1913] AC 417 at 443-444, HL, per Earl Loreburn, and at 465 per Lord Atkinson; *Savings and Investment Bank Ltd v Gasco Investments (Netherlands) BV (No 2)* [1988] Ch 422 at 442-443, [1988] 1 All ER 975 at 990-991, CA, per Nicholls LJ; *El Capistrano SA v ATO Marketing Ltd* [1989] 2 All ER 572 at 584, [1989] 1 WLR 471 at 485-486, CA, per Balcombe LJ; *Garvin v Domus Publishing Ltd* [1989] Ch 335 at 345, [1989] 2 All ER 344 at 349 per Walton J; *Cobra Golf Inc v Rata* [1998] Ch 109 at 155, [1997] 2 All ER 150 at 190-191 per Rimer J.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(1) IN GENERAL/405. Actus reus and mens rea.

405. Actus reus and mens rea.

In order for conduct to constitute a criminal contempt of court at common law, an actus reus and mens rea must both be present¹. In broad terms, the actus reus of contempt of court is conduct which interferes with or impedes the due administration of justice². It appears that, at

common law, only intentional acts may constitute criminal contempts; and that what is required is an intention to interfere with or impede the course of justice³.

In relation to contempt of court by publication, there is also a strict liability rule imposed by statute⁴.

1 See eg *R v Runtig* (1988) 89 Cr App Rep 243, CA; *R v Schot* [1997] 2 Cr App Rep 383, (1997) Times, 14 May, CA; and para 421 post. As to actus reus and mens rea see generally CRIMINAL LAW, EVIDENCE AND PROCEDURE.

2 See eg *A-G v Times Newspapers Ltd* [1992] 1 AC 191, [1991] 2 All ER 398, HL; *Dobson v Hastings* [1992] Ch 394, [1992] 2 All ER 94. See also paras 406, 409, 421-422 post.

3 See eg *R v Runtig* (1988) 89 Cr App Rep 243 at 247, CA, per Lord Lane LC; *R v Schot* [1997] 2 Cr App Rep 383, (1997) Times, 14 May, CA (intention to interfere with or impede the course of justice; recklessness is not sufficient). See also para 421 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE.

4 See para 410 et seq post.

UPDATE

405 Actus reus and mens rea

NOTE 3--See also *A-G v Punch Ltd* [2002] UKHL 50, [2003] 1 All ER 289.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(2) CONTEMPT IN THE FACE OF THE COURT/406. Conduct amounting to contempt.

(2) CONTEMPT IN THE FACE OF THE COURT

406. Conduct amounting to contempt.

The power to fine and imprison for a contempt committed in the face of the court is a necessary incident to every court of justice. Although the boundaries of this kind of contempt have not been precisely defined, a contempt in the face of the court may be broadly described as any word spoken or act done in, or in the precincts of, the court which obstructs or interferes with the due administration of justice or is calculated to do so¹. In order to constitute a contempt in the face of the court, it appears to be unnecessary that the act of contempt should take place wholly, or in part, in a court room itself²; nor does it seem to be necessary that all the circumstances of the contempt should be within the personal knowledge of the judicial officer dealing with the contempt³.

1 *R v Almon* (1765) Wilm 243 at 254; *R v Davison* (1821) 4 B & Ald 329 at 333; *Morris v Crown Office* [1970] 2 QB 114, [1970] 1 All ER 1079, CA. See also 2 Hawk PC (8th Edn) c 1 s 15, c 22 s 35; *R v Lefroy* (1873) LR 8 QB 134. It has been held that contempt in the face of the court 'is the same thing as 'contempt which the court can punish of its own motion'. It really means contempt in the cognizance of the court': see *Balogh v St Albans Crown Court* [1975] QB 73 at 84, [1974] 3 All ER 283 at 287, CA, per Lord Denning MR.

The power of the High Court or Court of Appeal to make an order of committal of its own motion in any case of contempt is now expressly recognised (see RSC Ord 52 r 5), although the court should only make such an order when it is urgent and imperative to act immediately (see *Balogh v St Albans Crown Court* supra; *Rooney v Snaresbrook Crown Court* (1978) 68 Cr App Rep 78, [1979] Crim LR 109, CA; *R v Moran* (1985) 81 Cr App Rep 51, CA; *R v Selby Justices, ex p Frame* [1992] QB 72 at 82, [1991] 2 All ER 344 at 352, DC, per Otton J; *DPP v Channel Four Television Co Ltd* [1993] 2 All ER 517, [1993] Crim LR 277, DC; *R v Powell* (1993) 98 Cr App Rep 224 at 226, CA, per Staughton LJ; *R v Bromell* (1995) Times, 9 February, CA; *R v Schot* [1997] 2 Cr App Rep 383,

(1997) Times, 14 May, CA; and para 494 post). For an instance of proceedings for contempt of court initiated by the court of its own motion see *R v IRC, ex p Kingston Smith* [1996] STC 1210.

The distinction between contempts in the face of the court and other criminal contempts is of importance because the power of inferior courts of record to punish immediately in a case of contempt is limited to contempts in the face of the court: see para 454 post. The distinction is also of importance in determining whether a person who is liable to be committed or fined for contempt may be granted representation under the Legal Aid Act 1988 s 29: see para 454 post.

2 It seems that misconduct in the precincts of a court may in certain circumstances be a contempt in the face of the court: see *R v Almon* (1765) Wilm 243 at 265; *Ex p Burrows* (1803) 8 Ves 535; *R v Wigley* (1835) 7 C & P 4; *Re Johnson* (1887) 20 QBD 68, CA. See also *Ex p Wilton* (1842) 1 Dowl NS 805; *Kirby v Webb* (1887) 3 TLR 763. The question whether misconduct before a judge or master in chambers is a contempt in the face of the court was expressly left open in *Re Johnson* supra. The better view appears to be that it would constitute contempt in the face of the court although the proper course is for the judge or master to deal with the contempt by bringing it before the court: *Re Johnson* supra at 73-74; *Re Tyrone Election Petition, Macartney v Corry* (1873) IR 7 CL 242; cf the County Courts Act 1984 s 14 (as amended) (see COURTS vol 10 (Reissue) para 740). See also *Read v King* [1997] 2 CL 5, CA (committal order made by district judge in a county court; quashed on other grounds by Court of Appeal).

3 See *McKeown v R* (1971) 16 DLR (3d) 390, Can SC; *Balogh v St Albans Crown Court* [1975] QB 73, [1974] 3 All ER 283, CA; *Lecoite v Court's Administrator of the Central Criminal Court* (8 February 1973, unreported), CA.

UPDATE

406-408 Contempt in the Face of the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

406 Conduct amounting to contempt

NOTE 1--Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(2) CONTEMPT IN THE FACE OF THE COURT/407. Examples of contempt in the face of the court.

407. Examples of contempt in the face of the court.

The following forms of conduct may constitute contempt in the face of the court:

- (1) assaults committed in court. The assault of a judge or any other judicial officer while he is carrying out his official functions in court is an obvious and serious contempt in the face of the court¹. It is also a contempt in the face of the court to assault or threaten any person in court during court proceedings²;
- (2) insults to the court. It is a contempt of any court of justice to disturb and obstruct the court by insulting behaviour in its presence and at a time when it is actually sitting³. Although the most common example of such a contempt is insulting behaviour directed to a judge or judicial officer⁴, insults directed to the jury or to counsel or a solicitor⁵ may also constitute a contempt in the face of the court. Contempt may be shown either by language or manner. Whether the words or behaviour in issue amount to a contempt is a question of fact to be decided in the

circumstances of the particular case. Language which might be perfectly proper if uttered in a temperate manner may be grossly improper if uttered in a different manner⁶;

(3) interruption of court proceedings. Wilful interruption or disturbance of court proceedings by words or conduct is an interference with the administration of justice and a contempt of court⁷;

(4) photographing or sketching in court. The taking of photographs, or the making with a view to publication of portraits or sketches, of a judge, juror, witness or party in a court or the publication of any such photograph, portrait or sketch is an offence⁸;

(5) use of tape recorder in court. It is a contempt of court to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court⁹. The court may order the instrument, or any recording made with it, or both, to be forfeited¹⁰. These provisions do not apply to the making or use of sound recordings for the purposes of official transcripts of proceedings¹¹;

(6) contempt by witnesses. A witness who, without lawful excuse, refuses to be sworn¹² or, being sworn, refuses to answer¹³, or who prevaricates¹⁴, or who remains in court after the witnesses have been ordered out of court¹⁵, is guilty of contempt in the face of the court and may be fined and imprisoned¹⁶. In civil proceedings a witness may decline to answer on the grounds of privilege¹⁷. The extent to which a witness may decline to answer in civil proceedings on the ground that he may incriminate himself is unclear¹⁸. Any person who without just excuse disobeys a witness summons requiring him to attend before any court is guilty of contempt of that court and may be punished summarily by that court as if his contempt has been committed in the face of the court¹⁹;

(7) contempt by jurors. Misbehaviour by a juror in court may constitute a contempt in the face of the court²⁰;

(8) contempt by litigants, counsel or solicitors. It is of the highest importance that advocates, whether counsel, solicitors or litigants in person, should be allowed considerable latitude in the manner in which they conduct a case²¹. Consistently with this, the courts have shown a reluctance to punish advocates for contempt. Language or behaviour which is outrageous or scandalous or which is deliberately insulting to the court is, however, punishable as a contempt in the face of the court²², though not every act of discourtesy to a court by an advocate amounts to contempt²³. Insults to counsel or opposing litigants, and offensive advocacy, do not in general amount to a contempt of court unless calculated to lead to a brawl in court²⁴.

1 See eg *Anon* (1631) 2 Dyer 188bn (brickbat thrown at the judge); *Re Cosgrave* (1877) Seton's Judgments and Orders (7th Edn) p 457 (egg flung at the judge in court).

2 Thus it is for example a contempt to assault or to threaten, in court, jurors (*Carlion's Case* (1345) 2 Dyer 188b), witnesses (*Davis's Case* (1560) 2 Dyer 188b; *Rowland v Samuel* (1847) 9 LTOS 280), parties (*R v Wigley* (1835) 7 C & P 4), or solicitors (*Re Johnson* (1887) 20 QBD 68, CA). It appears that an assault committed or threat made in the precincts of the court is a contempt in the face of the court where it is directed at a person having a duty to discharge in the court: see eg *Re Johnson* supra (threat to solicitor in passage outside judge's chambers); *Purdin v Roberts* (1910) 74 JP Jo 88 (assault on witness in corridor outside the court). Cf *Read v King* [1997] 2 CL 5, CA (assault on county court bailiff punished under the County Courts Act 1984 s 118 (as amended) (see para 454 post; and COURTS vol 10 (Reissue) para 740)).

3 *Harrison's Case* (1638) Cro Car 503; *Ex p Duke of Marlborough* (1844) 5 QB 955. See also *R v Brompton County Court Judge* [1893] 2 QB 195.

4 See eg *R v Davison* (1821) 4 B & Ald 329 (insulting and blasphemous remarks during a trial); *R v Stafford County Court Judge* (1888) 57 LJQB 483, CA (saying, of an observation by the judge, 'That is a most unjust remark'). See also *Willis v MacLachlan* (1876) 1 Ex D 376, CA.

5 *Ex p Pater* (1864) 5 B & S 299; *Re Johnson* (1887) 20 QBD 68, CA; *French v French* (1824) 1 Hog 138; and see *R v Runting* (1988) 89 Cr App Rep 243 at 245, CA. See also the County Courts Act 1984 s 118(1)(a) (which makes punishable as contempt any wilful insults to a judge, juror, witness or officer of a county court); the Contempt of Court Act 1981 s 12(1)(a) (which makes punishable as contempt any wilful insults to the justice or justices, witness or officer of the magistrates' court, or any solicitor or counsel having business in the court); and para 454 post. But see note 6 infra; and the text and notes 21-24 infra.

6 *Carus Wilson's Case* (1845) 7 QB 984. It is rare (though not impossible) for words used in the course of argument, however irrelevant, to amount to a contempt when they relate to an opponent whether counsel or litigant: *Parashuram Detaram Shamdasani v R* [1945] AC 264, PC. Disrespectful conduct falling short of insult will probably not amount to a contempt provided it does not interrupt court proceedings; but see *Oswald on Contempt* (3rd Edn) p 58. See also *Maharaj v A-G for Trinidad and Tobago* [1977] 1 All ER 411, PC.

7 *Morris v Crown Office* [1970] 2 QB 114, [1970] 1 All ER 1079, CA (protesters breaking up court proceedings by singing, shouting and scattering pamphlets); *Gohoho v Lintas Export Advertising Services* (1964) Times, 21 January (litigant stripping naked and lying on bench in court); *Lecointe v Court's Administrator of the Central Criminal Court* (8 February 1973, unreported), CA (distribution of pamphlets inciting picketing of court); *R v West Yorkshire Coroner, ex p Smith (No 2)* [1985] QB 1096, [1985] 1 All ER 100, DC (outburst of shouting addressed to press gallery); *R v Powell* (1993) 98 Cr App Rep 224, CA (wolf-whistle directed at juror from public gallery); and see *R v Stone* (1796) 6 Term Rep 527 at 530. But cf *Balogh v St Albans Crown Court* [1975] QB 73, [1974] 3 All ER 283, CA (preparatory steps taken to introduce laughing gas into court not sufficient to amount to completed contempt). See also the County Courts Act 1984 s 118(1)(b) (wilful interruption of county court proceedings or other misbehaviour in court); the Contempt of Court Act 1981 s 12(1)(b) (wilful interruption of magistrates' court proceedings or other misbehaviour in court); and para 454 post.

To disturb court proceedings by continuing to address the court in defiance of the direction of a judge may also constitute a contempt of court: see eg *Re Sheriff of Surrey* (1860) 2 F & F 234. See also the text to notes 21-24 infra.

8 See the Criminal Justice Act 1925 s 41(1) (amended by the Criminal Justice Act 1982 ss 38, 46). A photograph, portrait or sketch is deemed to be taken or made in court if it is taken or made in the courtroom or in the building or in the precincts of the building in which the court is held or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the courtroom or building or precincts: see the Criminal Justice Act 1925 s 41(2)(c); and PRESS, PRINTING AND PUBLISHING.

But see *R v Runting* (1988) 89 Cr App Rep 243, CA (taking photographs of defendants leaving court was held not to constitute a contempt in the face of the court).

An offence under the Criminal Justice Act 1925 s 41 (as amended) is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see s 41(1) (as so amended). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

9 Contempt of Court Act 1981 s 9(1)(a). See also *Practice Direction (Tape Recorders)* [1981] 3 All ER 848, [1981] 1 WLR 1526, CA. It is not clear whether a finding of mens rea is required for there to be a contempt under the Contempt of Court Act 1981 s 9(1): see *Re Hooker (Patricia) and the Contempt of Court Act 1981* [1993] COD 190, DC. A magistrates' court has no power to punish such a contempt under the Contempt of Court Act 1981 s 12 (as amended) (see para 454 post): *Re Hooker (Patricia) and the Contempt of Court Act 1981* supra. As to the publication of any recording of legal proceedings see para 429 post.

Leave may be granted or refused at the discretion of the court and, if granted, may be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave; and where leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings: Contempt of Court Act 1981 s 9(2). The use of a recording in contravention of any such conditions is a contempt of court: s 9(1)(c). See also para 429 post.

10 Ibid s 9(3). This is without prejudice to any other power to deal with an act of contempt: see s 9(3). Unless the court otherwise determines on application by a person appearing to be the owner, any object so forfeited must be sold or otherwise disposed of in such manner as the court may direct: see s 9(3).

11 Ibid s 9(4).

12 *Hennegal v Evance* (1806) 12 Ves 201; *R v Phillips (Peter)* (1983) 78 Cr App Rep 88, CA. As to the appropriate punishment see *R v Phillips (Peter)* supra. In exceptional circumstances a refusal to take an oath or affirm may be justified (eg by reason of duress): see note 13 infra. As to the refusal of a witness to attend a court hearing see para 476 post; and CIVIL PROCEDURE vol 11 (2009) PARA 1016.

13 See eg *Re Davies* (1888) 21 QBD 236 at 238; *A-G v Mulholland* [1963] 2 QB 477, [1963] 1 All ER 767, CA; *R v K* (1983) 78 Cr App Rep 82, [1983] Crim LR 736, CA (duress); *R v Lewis* (1993) 96 Cr App Rep 412, CA (fear of attack may constitute lawful excuse if it is so real and compelling that the witness could not reasonably be expected to act otherwise). See also para 408 post. As to refusal of a witness to be sworn or to give evidence in a county court see the County Courts Act 1984 s 55 (as amended); and CONTEMPT OF COURT vol 9(1) (Reissue) para 407. As to such refusal in magistrates' courts see the Magistrates' Courts Act 1980 s 97(4) (as amended); and MAGISTRATES vol 29(2) (Reissue) para 736. As to attendance before the examiner of the High Court see RSC Ord 39 r 5. See generally CIVIL PROCEDURE vol 11 (2009) PARA 1016.

14 Committal for contempt in such a case may only be justified by a specific finding of an evinced intention to leave a question or questions unanswered: see *Coward v Stapleton* (1953) 90 CLR 573, Aust HC.

15 *Skelton v Castle* (1837) 6 JP 154n; *Chandler v Horne* (1842) 2 Mood & R 423.

16 2 Hawk PC (8th Edn) c 22 s 35; 4 Bl Com 284.

17 As to privilege see CIVIL PROCEDURE vol 11 (2009) PARA 970 et seq. Although self-incrimination (see note 18 infra) and privilege are the commonest grounds for refusing to answer, a witness may be excused from answering on other grounds. Thus, for example, the court has declined to commit a witness for refusing to answer when his attendance expenses had not been paid: see *Re Working Men's Mutual Society* (1882) 21 ChD 831. See also notes 12-13 supra. Journalists enjoy no general privilege at common law against being required to disclose their sources of information although the courts have a discretion not to insist on disclosure: *A-G v Mulholland* [1963] 2 QB 477, [1963] 1 All ER 767, CA; *A-G v Clough* [1963] 1 QB 773, [1963] 1 All ER 420. As to disclosure of the source of information see further para 9 post.

18 See para 501 text and note 13 post; and CIVIL PROCEDURE vol 11 (2009) PARAS 974-976.

19 See the Criminal Procedure (Attendance of Witnesses) Act 1965 s 3(1) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1410. The maximum penalty is three months' imprisonment: see s 3(2). As from a day to be appointed, similar provisions apply where a person without just excuse disobeys a requirement to produce a document or thing for inspection in advance of the proceedings: see ss 2A, 3(1A) (both prospectively added by the Criminal Procedure and Investigations Act 1996 s 66). At the date at which this volume states the law no such day had been appointed. The offence is an absolute one, and there is no requirement that disobedience should be wilful or deliberate: *R v Lennock* (1993) 97 Cr App Rep 228 at 232, CA, per Morland J. Culpable forgetfulness on the part of a witness does not constitute just excuse for failure to attend: *R v Lennock* supra at 232 per Morland J. See also para 476 text and note 6 post. As to witness summonses see CIVIL PROCEDURE vol 11 (2009) PARA 1004 et seq.

20 See eg *Welcden v Elkington* (1578) 2 Plowd 516 at 518a (juror having box of sweetmeats in court). For further examples see Oswald on Contempt (3rd Edn) p 69 et seq. As to non-attendance of jurors and other acts of contempt by jurors see para 451 post.

21 See Oswald on Contempt (3rd Edn) p 56.

22 See eg *R v Davison* (1821) 4 B & Ald 329 (repeated use of blasphemous language); *R v Jordan* (1888) 36 WR 797, CA (insults to judge); *Ex p Pater* (1864) 5 B & S 299 (insults to jury). Deliberate disregard of a court order by counsel or a party may also constitute a contempt in the face of the court: see eg *Watt v Ligertwood* (1874) LR 2 Sc & Div 361, HL (seizing a document in manibus curiae and carrying it away in defiance of the court).

23 *Izuora v R* [1953] AC 327, [1953] 1 All ER 827, PC; *R v Tamworth Justices, ex p Walsh* (1994) Times, 3 March, DC (quashing order that a solicitor be taken into custody for criticising the court's listing system). See also *McKeown v R* (1971) 16 DLR (3d) 390, Can SC.

24 *Parashuram Detaram Shamdasani v R* [1945] AC 264, PC. As to other acts of contempt by counsel or officers of the court see para 446 et seq post.

UPDATE

406-408 Contempt in the Face of the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

407 Examples of contempt in the face of the court

NOTE 8--See *R v D (Contempt of Court: Illegal Photography)* (2004) Times, 13 May, CA (photographs taken with mobile phone had potential to seriously prejudice administration of criminal justice; immediate custodial sentence appropriate). 1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

NOTE 9--*Practice Direction* [1981] 3 All ER 848 revoked: *Practice Note* [1999] 2 All ER 490, CA (see CIVIL PROCEDURE vol 11 (2009) PARA 407).

NOTE 19--Crown Court judges should consider directing police officers not to issue a warrant when satisfied that witness would attend voluntarily or where witness would accompany them to court: *R v Popat* [2008] EWCA Crim 1921, (2008) 173 JP 24.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(2) CONTEMPT IN THE FACE OF THE COURT/408. Refusal to disclose sources of information contained in a publication.

408. Refusal to disclose sources of information contained in a publication.

No court¹ may require a person to disclose², nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication³ for which he is responsible, unless it be established to the satisfaction of the court⁴ that disclosure is necessary⁵ in the interests of justice⁶ or national security or for the prevention of disorder or crime⁷.

1 These provisions are of general application and apply to interlocutory proceedings and to actual trial alike; they apply whatever the nature of the judicial proceedings or, in relation to civil proceedings, whatever the nature of the claim or cause of action: see *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339, [1984] 3 All ER 601, HL. See also *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 40-41, [1990] 2 All ER 1 at 6-7, HL, per Lord Bridge of Harwich.

2 The court is prohibited from requiring disclosure by any means; the prohibition is not limited to orders of the court which in terms direct disclosure of the identity of the source: *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339, [1984] 3 All ER 601, HL. See also *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 40-41, [1990] 2 All ER 1 at 6-7, HL, per Lord Bridge of Harwich.

3 As to the meaning of 'publication' see *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339 at 348, [1984] 3 All ER 601 at 606, HL, per Lord Diplock. The phrase 'information contained in a publication' includes photographs: *Handmade Films (Productions) Ltd v Express Newspapers plc* [1986] FSR 463 at 468 per Sir Nicholas Browne-Wilkinson V-C. These provisions apply to unpublished information communicated and received for the purposes of publication: *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 40, [1990] 2 All ER 1 at 7, CA, per Lord Bridge of Harwich, and at 54-55 and 17 per Lord Lowry.

4 'Established' means proved by evidence; and the burden of proving that disclosure falls within the exceptions is on the party seeking disclosure: *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339, [1984] 3 All ER 601, HL. See also *Re An Inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] AC 660 at 706-707, [1988] 1 All ER 203 at 210, HL, per Lord Griffiths, and at 709 and 212 per Lord Oliver of Aylmerton (in this case, which concerned insider dealing, it was held at 702-703 and 207 per Lord Griffiths, and at 708 and 212 per Lord Oliver of Aylmerton, that where there is a reference to the court under the Financial Services Act 1986 s 178 (as amended) the test to be applied in determining whether a person has a reasonable excuse for refusing to disclose information requested under s 177 (as amended) is the same as that

for cases falling within the Contempt of Court Act 1981 s 10). As to insider dealing see FINANCIAL SERVICES AND INSTITUTIONS.

As to affidavit evidence see *Secretary of State for Defence v Guardian Newspapers Ltd* supra at 344-346, 354-356 and 603-604, 610-611 per Lord Diplock, and at 372-373 and 623-624 per Lord Bridge of Harwich (an affidavit in support of an interlocutory application for disclosure of sources of information affecting national security should be as specific as possible as to the reasons why speedy disclosure is necessary in the interests of national security); *Re An Inquiry under the Company Securities (Insider Dealing) Act 1985* supra at 709 and 212 per Lord Oliver of Aylmerton (affidavit evidence in support of a claim that disclosure is necessary for the prevention of crime).

'Satisfied' means satisfied on a balance of probabilities on the facts put in evidence, which may be supplemented by reasonable inference: *Secretary of State for Defence v Guardian Newspapers Ltd* supra. However, if the question arises on an interlocutory application and the making of the order before trial would effectually destroy the protection offered by the Contempt of Court Act 1981 s 10, the court should be careful not to make an order unless the evidence put before it establishes to its satisfaction that the inference of necessity is unlikely to be displaced when all the evidence is produced and tested at trial: *Secretary of State for Defence v Guardian Newspapers Ltd* supra.

5 Necessity has to be established as a question of fact, and a finding in favour of necessity is a condition precedent to the court having jurisdiction to order disclosure of sources of information: *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339 at 350, [1984] 3 All ER 601 at 607, HL, per Lord Diplock; *Special Hospitals Service Authority v Hyde* (1994) 20 BMLR 75 at 85 per Sir Peter Pain. See also the guidance given in *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 44, [1990] 2 All ER 1 at 9-10, HL, per Lord Bridge of Harwich (in the context of disclosure in the interests of justice). Expediency, however great, is not enough; and nor is convenience: *Secretary of State for Defence v Guardian Newspapers Ltd* supra. See also *Re An Inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] AC 660 at 704, [1988] 1 All ER 203 at 208, HL, per Lord Griffiths, and at 709 and 212 per Lord Oliver of Aylmerton.

It is essential that the court should first identify and define the issue in the legal proceedings which is said to require the disclosure of sources, and then to decide whether, having regard to the nature of the issue and the circumstances of the case, it is in fact 'necessary' to make the order: *Maxwell v Pressdram Ltd* [1987] 1 All ER 656 at 665, [1987] 1 WLR 298 at 308-309, CA, per Kerr LJ (defamation action; in which it was held that the fact that the jury will not be able to know the truth of the matters on which a claim for exemplary damages rests without an order for disclosure of sources of information being made, does not of itself entitle the court to conclude that the making of an order for disclosure is necessary in the interests of justice).

6 Thus persons should be enabled to exercise important legal rights and to protect themselves from serious legal wrongs: *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 43, [1990] 2 All ER 1 at 9, HL, per Lord Bridge of Harwich, and at 53-54 and 16 per Lord Oliver of Aylmerton. See also *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339, [1984] 3 All ER 601, HL; *Handmade Films (Productions) Ltd v Express Newspapers plc* [1986] FSR 463; *Maxwell v Pressdram Ltd* [1987] 1 All ER 656 at 657, [1987] 1 WLR 298 at 300, CA, per Kerr LJ.

In balancing one public interest against another it is only if the court is satisfied that disclosure in the interests of justice is of such preponderating importance as to override the statutory privilege against disclosure that the threshold of necessity will be reached: *X Ltd v Morgan-Grampian (Publishers) Ltd* supra at 44-45 and 9-10 per Lord Bridge of Harwich, and at 52 and 15 per Lord Oliver of Aylmerton. See also *Saunders v Punch Ltd (t/a Liberty Publishing)* [1998] 1 All ER 234, [1998] 1 WLR 986.

On the same facts as in *X Ltd v Morgan-Grampian (Publishers) Ltd* supra, the European Court of Human Rights reached a different conclusion from the House of Lords, holding that both the order requiring a journalist to reveal his source and the fine imposed upon him for refusing to do so constituted a violation of his right to freedom of expression under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (see para 403 note 1 ante): see *Goodwin v United Kingdom* (1996) 22 EHRR 123. However, although they reached different conclusions on the facts in that case, the European Court of Human Rights and the House of Lords applied substantially the same tests, and the law does not enable the press to protect sources of information in all circumstances: *Camelot Group plc v Centaur Communications Ltd* [1998] 1 All ER 251 at 258-261, CA, per Schiemann LJ.

A ruling that disclosure is not necessary in the interests of justice does not preclude a judge from ruling, once further evidence has been adduced during the course of a trial, that disclosure is indeed necessary: *Maxwell v Pressdram Ltd* supra at 667 and 311 per Parker LJ.

7 Contempt of Court Act 1981 s 10. 'Prevention of crime' is to be understood in a broad sense, and not as referring to the prevention of a particular crime or crimes: *Re An Inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] AC 660 at 705, [1988] 1 All ER 203 at 209, HL, per Lord Griffiths, and at 709 and 212 per Lord Oliver of Aylmerton. See also *X v Y* [1988] 2 All ER 648.

The protection provided by the Contempt of Court Act 1981 s 10 is available even though the disclosure would be relevant to the determination by the court of an issue in the particular proceedings: *Secretary of State for*

Defence v Guardian Newspapers Ltd [1985] AC 339 at 349, [1984] 3 All ER 601 at 606, HL, per Lord Diplock, and at 360 and 615 per Lord Scarman; *Maxwell v Pressdram Ltd* [1987] 1 All ER 656 at 667, [1987] 1 WLR 298 at 310, CA, per Parker LJ.

It is a question of fact whether in the particular case a requirement for disclosure of sources of information falls within one of the express exceptions; if it does not, the statutory right to refuse disclosure of sources of information is absolute, and there is no discretion: *Secretary of State for Defence v Guardian Newspapers Ltd* supra at 345 and 603 per Lord Diplock, and at 360 and 615 per Lord Scarman.

UPDATE

406-408 Contempt in the Face of the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

408 Refusal to disclose sources of information contained in a publication

NOTE 3--An internet discussion board which merely provides a facility for discussion is not a publication for which the website operator is responsible; accordingly, a court can require the disclosure of a source of information contained in such a discussion board: *Totalise plc v Motley Fool Ltd* [2001] EMLR 750.

NOTE 4--Financial Services Act 1986 repealed: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(i) In general/409. Conduct amounting to contempt.

(3) CONTEMPTS COMMITTED OUTSIDE THE COURT

(i) In general

409. Conduct amounting to contempt.

Criminal contempts committed outside the court¹ may be categorised as follows²: publications which create a substantial risk that the course of justice in particular proceedings will be seriously impeded or prejudiced regardless of intent to do so³; publications which are intended to interfere with or impede the administration of justice⁴; publications in breach of restrictions on reporting of proceedings in court⁵; acts which scandalise, or otherwise lower the authority of, the court⁶; acts which interfere with or obstruct persons having duties to exercise in a court of justice⁷; acts which interfere with persons over whom the court exercises a special jurisdiction⁸; acts in abuse of the process of the court⁹; acts in breach of duty by persons officially connected with the court or its process¹⁰; and acts of interference with the court's documents¹¹.

1 Such contempts are sometimes described as constructive contempts in order to distinguish them from contempts committed in the face of the court. As to the importance of the distinction see para 406 note 1 ante.

2 The categories are not closed: see eg *Dobson v Hastings* [1992] Ch 394, [1992] 2 All ER 94.

3 See para 410 et seq post.

- 4 See paras 421-426 post.
- 5 See paras 428-432 post.
- 6 See para 433 post.
- 7 See paras 434-442 post.
- 8 See paras 443-444 post.
- 9 See para 445 post.
- 10 See paras 446-452 post.
- 11 See para 453 post.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/410. The strict liability rule.

(ii) Strict Liability

410. The strict liability rule.

The Contempt of Court Act 1981 sets out the strict liability rule, which is the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so¹. It applies in the context of all kinds of legal proceedings, both civil and criminal².

1 See the Contempt of Court Act 1981 ss 1, 19. 'Court' includes any tribunal or body exercising the judicial power of the state, and 'legal proceedings' must be construed accordingly: s 19. See further para 454 note 1 post.

2 See *A-G v English* [1983] 1 AC 116 at 142, [1982] 2 All ER 903 at 919, HL, per Lord Diplock (in the context of the Contempt of Court Act 1981 s 2(2): see paras 411, 413 post).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/411. Definition of scope of the strict liability rule.

411. Definition of scope of the strict liability rule.

The strict liability rule applies only in relation to publications¹ which create a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced². The strict liability rule applies to a publication only if the proceedings in question are active at the time of the publication³.

The most common examples of publications which are punishable under this head of contempt are publications which tend to impair the impartiality of the court which is to try the proceedings⁴, and publications which, by deterring or influencing the evidence given by witnesses, impair the ability of the court to determine the true facts⁵.

- 1 For the meaning of 'publication' see para 412 post.
- 2 See the Contempt of Court Act 1981 s 2(1), (2); and para 413 post.
- 3 See *ibid* s 2(3); and para 415 post.
- 4 See eg *A-G v Independent Television News Ltd* [1995] 2 All ER 370, [1995] 1 Cr App Rep 204, DC (risk that mind of juror might be influenced at trial); *Re Lonrho plc* [1990] 2 AC 154 at 209, [1989] 2 All ER 1100 at 1116, HL, per Lord Bridge of Harwich.
- 5 See eg *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926 at 931, HC, per Lord Hope; *Re Lonrho plc* [1990] 2 AC 154 at 209, [1989] 2 All ER 1100 at 1116, HL, per Lord Bridge of Harwich.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/412. Meaning of 'publication' for the purpose of the strict liability rule.

412. Meaning of 'publication' for the purpose of the strict liability rule.

For the purpose of the strict liability rule, 'publication' includes any speech, writing, programme included in a programme service¹ or other communication in whatever form², which is addressed to the public at large or any section of the public³.

- 1 'Programme service' has the same meaning as in the Broadcasting Act 1990 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) para 328): Contempt of Court Act 1981 s 2(5).
- 2 Thus photographs are included: see eg *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926, HC.
- 3 See the Contempt of Court Act 1981 ss 2(1), 19 (s 2(1) amended by the Broadcasting Act 1990 s 203 (1), Sch 20 para 31(1)). Except in the provisions relating to use of tape recorders (see the Contempt of Court Act 1981 s 9; and paras 407 head (5) ante, 429 post), 'publish' must be construed accordingly: s 19.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/413. Substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

413. Substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

The strict liability rule applies only to a publication¹ which creates a substantial risk² that the course of justice in the proceedings³ in question will be seriously impeded or prejudiced⁴. The question whether the course of justice in particular proceedings will be impeded or prejudiced by a publication depends primarily upon whether the publication will bring influence to bear which is likely to divert the proceedings in some way from the course which they would otherwise have followed⁵. The risk and the degree of prejudice will generally increase with the proximity of the trial⁶, but each case will turn on its own facts⁷. Attempts to establish the types of material inherently likely to create the requisite risk have been rejected by the courts⁸.

1 For the meaning of 'publication' see para 412 ante.

2 The risk to be assessed is that which was created by the publication of the allegedly offending matter at the time when it was published: *A-G v English* [1983] 1 AC 116 at 141, [1982] 2 All ER 903 at 918, HL, per Lord Diplock; *A-G v British Broadcasting Corp*n [1992] COD 264, (1992) Independent, 3 January, DC; *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 48-49, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 885, DC, per Brooke J; *A-G v Independent Television News Ltd* [1995] 2 All ER 370 at 375, 381, [1995] 1 Cr App Rep 204 at 208, 216, DC, per Leggatt LJ; *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926 at 929, HC, per Lord Hope; *A-G v British Broadcasting Corp*n [1997] EMLR 76 at 81, DC, per Auld LJ.

'Substantial' means 'not insubstantial' or 'not minimal': *A-G v News Group Newspapers Ltd* [1987] QB 1 at 15, [1986] 2 All ER 833 at 841, CA, per Sir John Donaldson MR. See also *HM Advocate v Caledonian Newspapers Ltd* supra at 930 per Lord Hope. A risk that is only remote is not substantial: *A-G v English* supra at 141-142 and 919 per Lord Diplock; *A-G v British Broadcasting Corp*n supra.

The risk must be practical and not theoretical: *A-G v Guardian Newspapers Ltd* supra at 45, sub nom *A-G v Guardian Newspapers Ltd (No 3)* at 881 per Brooke J. See also *A-G v Independent Television News Ltd* supra at 383 and 218 per Leggatt LJ. The courts have repeatedly cautioned against exaggerating the risk that juries will be prejudiced: see eg *R v Kray* (1969) 53 Cr App Rep 412 at 414-415 per Lawton J; *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 794, [1982] 2 All ER 269 at 287, CA, per Lord Denning MR; *A-G v News Group Newspapers Ltd* supra at 16 and 842 per Sir John Donaldson MR, and at 19 and 844 per Sir George Waller; *A-G v Guardian Newspapers Ltd* supra at 45, sub nom *A-G v Guardian Newspapers Ltd (No 3)* at 881 per Mann LJ; *Ex p The Telegraph plc* [1993] 2 All ER 971 at 978, [1993] 1 WLR 980 at 987, CA, per Lord Taylor CJ; *R v Mickleburgh* [1995] 1 Cr App Rep 297 at 303, CA, per Lord Taylor CJ; *A-G v MGN Ltd* [1997] 1 All ER 456 at 461-462, DC, per Schiemann LJ; but cf *MGN Pension Trustees Ltd v Bank of America National Trust and Savings Association* [1995] 2 All ER 355 at 365, [1995] EMLR 99 at 112 per Lindsay J.

The width of distribution of the publication is likely to be an important factor in determining the seriousness of the risk: *A-G v MGN Ltd* supra at 460-461, DC, per Schiemann LJ. See also *A-G v News Group Newspapers Ltd* supra at 15 and 841 per Sir John Donaldson MR; *A-G v Independent Television News Ltd* supra at 378-379, 383 and 213-214, 218 per Leggatt LJ, and at 386 and 221-222 per Buxton J; *HM Advocate v Caledonian Newspapers Ltd* supra at 930 per Lord Hope.

3 The law of contempt is concerned to ensure that civil proceedings are conducted and tried free from the interference of prejudicial publications, but the decline in the number of jury trials in civil matters has substantially reduced the risk, which exists in criminal proceedings, that a publication may influence or prejudice the court against a party.

It is only in rare cases that a publication will be held to constitute a contempt under this head in the case of a trial by a judge alone, as it is accepted that judges are capable of guarding against allowing any prejudicial matter to influence them in deciding a case: see *Metropolitan Music Hall Co v Lake* (1889) 58 LJ Ch 513; *Grimwade v Cheque Bank Ltd* (1897) 13 TLR 305; *Re William Thomas Shipping Co Ltd, HW Dillon & Sons Ltd v William Thomas Shipping Co Ltd, Re Thomas* [1930] 2 Ch 368 at 373; *Vine Products Ltd v Green* [1966] Ch 484 at 496, [1965] 3 All ER 58 at 62 per Buckley J; *Re Lonrho plc* [1990] 2 AC 154 at 209, [1989] 2 All ER 1100 at 1116, HL, per Lord Bridge of Harwich; but cf *A-G v Times Newspapers Ltd* [1973] QB 710 at 722, [1972] 3 All ER 1136 at 1142, DC, per Lord Widgery CJ. As to the possible effect of prejudicial comment on appellate tribunals see *R v Davies, ex p Delbert-Evans* [1945] KB 435, sub nom *Delbert-Evans v Davies and Watson* [1945] 2 All ER 167, DC; *R v Duffy, ex p Nash* [1960] 2 QB 188, [1960] 2 All ER 891, DC; *Re Lonrho plc* supra at 209-210 and 1117.

On the other hand, the effect of a publication on witnesses or on the parties themselves in the conduct of their proceedings may be of importance in the case of civil proceedings.

For an instance in which it was held that a publication gave rise to a substantial risk that a juror or jurors might be prejudiced against the plaintiff in particular civil legal proceedings see *A-G v Hislop* [1991] 1 QB 514 at 528, [1991] 1 All ER 911 at 921, CA, per Parker LJ, at 533 and 924 per Nicholls LJ, and at 536 and 927 per McCowan LJ.

4 See the Contempt of Court Act 1981 s 2(2); and para 411 ante. 'Serious' bears its plain ordinary meaning; 'impede' means to slow down, delay, or to hinder, obstruct; and to 'prejudice' something or someone is to say or do that which is detrimental or injurious to the interest of that thing or person: *A-G v British Broadcasting Corp*n [1992] COD 264, (1992) Independent, 3 January, DC.

For there to be a contempt under this head there must be both some risk that the proceedings in question will be affected and a prospect that, if the proceedings are affected, the effect will be serious: *A-G v News Group Newspapers Ltd* [1987] QB 1 at 15, [1986] 2 All ER 833 at 841, CA, per Sir John Donaldson MR. See also *A-G v British Broadcasting Corp*n supra; *A-G v British Broadcasting Corp*n [1997] EMLR 76 at 81, DC, per Auld LJ. If, in a criminal trial upon indictment, it is the outcome of the trial which is put at risk, or the risk is that the jury might have to be discharged without proceeding to a verdict, then that is as serious as anything could be: *A-G v English* [1983] 1 AC 116 at 142, [1982] 2 All ER 903 at 919, HL, per Lord Diplock. See also the examples given

in *A-G v News Group Newspapers Ltd* supra at 15 and 841 per Sir John Donaldson MR; and see *A-G v MGN Ltd* [1997] 1 All ER 456 at 458-459, DC, per Schiemann LJ. The fact that a defendant has been caught 'red-handed' and made a confession does not of itself lead to a conclusion that there is no substantial risk of prejudice by publishing details of the offence and the circumstances in which it is alleged to have been committed: *A-G v Unger* [1998] 1 Cr App Rep 308, [1998] EMLR 280, DC.

Reference in a publication to a defendant's previous convictions is not always a contempt of court: see eg *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926 at 930, HC, per Lord Hope (newspaper article held not to constitute a contempt of court under the strict liability rule; the article mentioned an untried prisoner's previous convictions but contained no reference to, or material linking the prisoner to, the charges then pending). Cf *A-G v Associated Newspapers Ltd* (1997) Independent, 6 November, DC (jury knew from the outset that all six defendants had been convicted of serious crimes, but publication of an article containing specific information about three of the six defendants was held to constitute a contempt of court).

Each publication may afford its own additional risk of prejudice, or exacerbate and increase the risk: *A-G v Independent Television News Ltd* [1995] 2 All ER 370 at 381, [1995] 1 Cr App Rep 204 at 215, DC, per Leggatt LJ (several newspapers published prejudicial material following a television news broadcast of similar material; the court rejected the submission that they were not liable because the damage had been done by the earlier publication); *A-G v MGN Ltd* supra at 460 per Schiemann LJ. The need in contempt proceedings to be sure and look at each publication separately and the need in trial proceedings to look at the risk of prejudice created by the totality of publications means that it may be proper to stay criminal proceedings on the ground of prejudice albeit that no individual is guilty of contempt: *A-G v MGN Ltd* supra at 466, DC, per Schiemann LJ. Conversely, a contempt may be committed under the strict liability rule even where a trial judge refuses to stay a trial: see eg *A-G v British Broadcasting Corp* supra at 79-80, 82-83 per Auld LJ.

5 *Re Lonrho plc* [1990] 2 AC 154 at 209, [1989] 2 All ER 1100 at 1116, HL, per Lord Bridge of Harwich; *A-G v MGN Ltd* [1997] 1 All ER 456 at 459, DC, per Schiemann LJ. The influence may affect the conduct of witnesses, the parties or the court: *Re Lonrho plc* supra; *A-G v MGN Ltd* supra.

6 *A-G v News Group Newspapers Ltd* [1987] QB 1 at 15, [1986] 2 All ER 833 at 841, CA, per Sir John Donaldson MR, and at 17 and 843 per Parker LJ; *A-G v MGN Ltd* [1997] 1 All ER 456 at 461, DC, per Schiemann LJ. See also *A-G v Independent Television News Ltd* [1995] 2 All ER 370 at 379, 382-383, [1995] 1 Cr App Rep 204 at 214, 217, DC, per Leggatt LJ, and at 386 and 221 per Buxton J; *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926, HC.

7 *A-G v News Group Newspapers Ltd* [1987] QB 1 at 18, [1986] 2 All ER 833 at 843, CA, per Parker LJ; *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 48-49, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 885, DC, per Brooke J; *A-G v Independent Television News Ltd* [1995] 2 All ER 370 at 378, [1995] 1 Cr App Rep 204 at 212, DC, per Leggatt LJ, and at 384-385 and 219-220 per Buxton J; *A-G v MGN Ltd* [1997] 1 All ER 456 at 460, DC, per Schiemann LJ. See also *Re Lonrho plc* [1990] 2 AC 154 at 209, [1989] 2 All ER 1100 at 1116, HL, per Lord Bridge of Harwich.

8 *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 43, 45, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 879, 881, DC, per Mann LJ, and at 48 and 885 per Brooke J. The fact that words are spoken in the context of a humorous and irreverent television programme and could not be taken as evidential in nature does not preclude a finding of contempt of court under the strict liability rule: *A-G v British Broadcasting Corp* [1997] EMLR 76, DC.

UPDATE

413 Substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced

NOTE 4--*A-G v Associated Newspapers Ltd*, cited, reported at [1998] EMLR 711, DC. When considering whether a publication constitutes a contempt, the fact that it caused a criminal trial to be stayed is persuasive but not decisive: *A-G v Birmingham Post and Mail Ltd* [1998] 4 All ER 49, DC. The standard to be applied in considering prejudice in the context of a contempt application is the same as that for criminal appeals, ie, whether there is a substantial risk of prejudicing the fairness of a criminal trial: *A-G v Guardian Newspapers Ltd* [1999] EMLR 904, DC.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/414. Burden and standard of proof.

414. Burden and standard of proof.

The burden of proving that the words complained of created a substantial risk that the course of justice in the particular proceedings would be seriously impeded or prejudiced¹ is on the applicant². The standard required is the criminal standard of proof³.

1 See para 413 ante.

2 A-G v Guardian Newspapers Ltd [1992] 3 All ER 38 at 42-43, sub nom A-G v Guardian Newspapers Ltd (No 3) [1992] 1 WLR 874 at 879-881, DC, per Mann LJ, and at 46 and 882-883 per Brooke J; A-G v Independent Television News Ltd [1995] 2 All ER 370 at 375, 383, [1995] 1 Cr App Rep 204 at 208, 218, DC, per Leggatt LJ; A-G v British Broadcasting Corp [1997] EMLR 76, DC.

3 A-G v Independent Television News Ltd [1995] 2 All ER 370 at 375, 383, [1995] 1 Cr App Rep 204 at 208, 218, DC, per Leggatt LJ, and at 386 and 221 per Buxton J; A-G v British Broadcasting Corp [1997] EMLR 76 at 80, DC, per Auld LJ; A-G v MGN Ltd [1997] 1 All ER 456 at 460, DC, per Schiemann LJ. See also para 501 post. As to the criminal standard of proof see CIVIL PROCEDURE; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1372.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/415. Proceedings active at the time of publication.

415. Proceedings active at the time of publication.

The strict liability rule applies to a publication¹ only if the proceedings in question are active at the time of publication². Proceedings are active as set out below³.

Criminal proceedings⁴ are active from the initial step in the proceedings (whether arrest without warrant⁵, the issue of a warrant for arrest⁶, the issue of a summons to appear⁷, the service of an indictment or other document specifying the charge⁸, or an oral charge⁹) until the proceedings are concluded by acquittal or by sentence¹⁰, by any other verdict, finding, order or decision which puts an end to the proceedings¹¹, or by discontinuance or by operation of law¹². Criminal proceedings before a court-martial or standing civilian court are not concluded, and therefore remain active, until the completion of any review of finding or sentence¹³. Criminal proceedings cease to be active if an order is made for the charge to lie on the file, but become active again if leave is later given for the proceedings to continue¹⁴.

Proceedings other than criminal proceedings and appellate proceedings are active from the time when arrangements for the hearing are made¹⁵ or, if no such arrangements are previously made, from the time the hearing begins, until the proceedings are disposed of or discontinued or withdrawn¹⁶.

Appellate proceedings, whether relating to criminal or civil proceedings, are active from the time when they are commenced (whether by application for leave to appeal or apply for review, or by notice of such an application, by notice of appeal or of application for review, or by other originating process) until disposed of or abandoned, discontinued or withdrawn¹⁷.

Where, in appellate proceedings relating to criminal proceedings, the court remits the case to the court below, or orders a new trial or a venire de novo, any further or new proceedings which result must be treated as active from the conclusion of the appellate proceedings¹⁸.

The proceedings of a tribunal of inquiry established under the Tribunals of Inquiry (Evidence) Act 1921¹⁹ must be treated as active from the time when the tribunal is appointed until its report is presented to Parliament²⁰.

1 For the meaning of 'publication' see para 412 ante.

2 See the Contempt of Court Act 1981 s 2(3); and para 411 ante.

3 Ibid s 2(4), Sch 1 para 2. In relation to proceedings in which more than one of the steps described is taken, the reference is to the first of those steps: see Sch 1 para 2.

4 For these purposes, 'criminal proceedings' means proceedings against a person in respect of an offence, not being appellate proceedings or proceedings commenced by motion for committal or attachment in England and Wales or Northern Ireland; and 'appellate proceedings' means proceedings on appeal from or the review of the decision of a court in any proceedings: *ibid* Sch 1 para 1.

5 Ibid Sch 1 paras 3, 4(a). In the case of proceedings brought, as a result of an order under the Criminal Procedure and Investigations Act 1996 s 54 (acquittal tainted by an administration of justice offence: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1276), against a person for an offence of which he has previously been acquitted, the initial step of the proceedings is a certification under s 54(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1276): Contempt of Court Act 1981 Sch 1 paras 3, 4A (Sch 1 para 3 amended, and Sch 1 para 4A added, by the Criminal Procedure and Investigations Act 1996 s 57(2), (4)).

6 Contempt of Court Act 1981 Sch 1 paras 3, 4(b). Criminal proceedings against a person which become active on the issue of a warrant for his arrest cease to be active at the end of the period of 12 months beginning with the date of the warrant unless he has been arrested within that period, but become active again if he is subsequently arrested: Sch 1 para 11.

7 Ibid Sch 1 paras 3, 4(c).

8 Ibid Sch 1 paras 3, 4(d).

9 Ibid Sch 1 paras 3, 4(e).

10 Ibid Sch 1 paras 3, 5(a). The reference in Sch 1 para 5(a) to 'sentence' includes any order or decision consequent on conviction or finding of guilt which disposes of the case, either absolutely or subject to future events, and a deferment of sentence under the Powers of Criminal Courts Act 1973 s 1 (as amended): Contempt of Court Act 1981 Sch 1 para 6.

11 Ibid Sch 1 paras 3, 5(b). Without prejudice to Sch 1 para 5(b), criminal proceedings against a person cease to be active (1) if the accused is found to be under a disability such as to render him unfit to be tried or unfit to plead; or (2) if a hospital order is made in his case under the Mental Health Act 1983 s 51(5) (as amended), but the proceedings become active again if they are later resumed: Contempt of Court Act 1981 Sch 1 para 10 (amended by the Mental Health Act 1983 s 148, Sch 4 para 57(c)). As to hospital orders see MENTAL HEALTH vol 30(2) (Reissue) para 539.

12 Contempt of Court Act 1981 Sch 1 paras 3, 5(c). For these purposes, proceedings are discontinued (1) if the charge or summons is withdrawn or a nolle prosequi entered; (2) if they are discontinued by virtue of the Prosecution of Offences Act 1985 s 23 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1159); (3) in the case of proceedings commenced by arrest without warrant, if the person arrested is released, otherwise than on bail, without having been charged: Contempt of Court Act 1981 Sch 1 para 7 (amended by the Prosecution of Offences Act 1985 s 31(5), Sch 1 Pt I para 4). Where criminal proceedings have been discontinued by virtue of the Prosecution of Offences Act 1985 s 23, but notice is given by the accused under s 23(7) that he wants the proceedings to continue, they become active again with the giving of that notice: Contempt of Court Act 1981 Sch 1 para 9A (added by the Prosecution of Offences Act 1985 Sch 1 Pt I para 5).

13 Contempt of Court Act 1981 Sch 1 paras 3, 8. As to courts-martial and standing civilian courts see ARMED FORCES.

14 Ibid Sch 1 para 9.

15 Arrangements for the hearing of proceedings are made (1) in the case of proceedings in the High Court for which provision is made by rules of court for setting down for trial, when the case is set down; (2) in the case of any proceedings, when a date for the trial or hearing is fixed: *ibid* Sch 1 para 13.

16 *Ibid* Sch 1 para 12. For these purposes, any motion or application made in or for the purposes of any proceedings, and any pre-trial review in the county court, is to be treated as a distinct proceeding: see Sch 1 para 12.

17 *Ibid* Sch 1 para 15.

18 *Ibid* Sch 1 para 16.

19 As to such tribunals see para 455 post; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) paras 13, 35; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 959-961.

Note that *ibid* s 20(2) refers to a tribunal 'established under' the Tribunals of Inquiry (Evidence) Act 1921, which is anomalous since that Act does not provide for the establishment of tribunals but rather for procedural matters; cf the Contempt of Court Act 1981 s 20(1), which refers to 'any tribunal to which the Tribunals of Inquiry (Evidence) Act 1921 applies' (see para 455 text and note 6 post).

20 Contempt of Court Act 1981 s 20(2).

UPDATE

415 Proceedings active at the time of publication

NOTE 4--In the Contempt of Court Act 1981 Sch 1 para 1 the reference to an offence includes a service offence within the meaning of the Armed Forces Act 2006 (see ARMED FORCES vol 2(2) (Reissue) PARA 451): Contempt of Court Act 1981 Sch 1 para 1A (added by the Armed Forces Act 2006 Sch 16 para 92).

NOTE 10--1973 Act s 1 now Powers of Criminal Courts (Sentencing) Act 2000 ss 1, 2.

TEXT AND NOTE 13--Contempt of Court Act 1981 Sch 1 para 8 repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTE 19--1921 Act repealed: Inquiries Act 2005 s 49, Sch 3.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/416. Persons liable for contempt.

416. Persons liable for contempt.

A contempt may be committed by any person responsible for the publication of the matter of which complaint is made¹. Thus the following persons may be held liable for contempt: editors, newspaper proprietors, publishers and printers²; distributors³; reporters⁴; and their equivalents in radio and television broadcasting⁵.

1 See also para 426 post. For the meaning of 'publication' see para 412 ante.

2 See eg *A-G v English* [1983] 1 AC 116, [1982] 2 All ER 903, HL; *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926, HC (in these cases, the proprietors of the newspapers were, as is often the case, also the printers and publishers). The Contempt of Court Act 1981 s 3(1) refers expressly to publishers: see para 417 post.

It seems that an individual director of a proprietary company may also be punishable in contempt: see *Re Lonrho plc* [1990] 2 AC 154, [1989] 2 All ER 1100, HL (contempt at common law; in this case it was held that no contempt had taken place).

3 See eg *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926, HC. The Contempt of Court Act 1981 s 3(2) refers expressly to distributors: see para 417 post.

4 See eg *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926 at 931, HC, per Lord Hope.

5 See eg *A-G v British Broadcasting Corp* [1992] COD 264, (1992) Independent, 3 January, DC. See also *A-G v Independent Television News Ltd* [1995] 2 All ER 370, [1995] 1 Cr App Rep 204, DC.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/417. Defence of innocent publication or distribution.

417. Defence of innocent publication or distribution.

A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies¹ if at the time of publication, having taken all reasonable care, he does not know and has no reason to suspect that relevant proceedings are active².

Nor is a person guilty of contempt of court under the strict liability rule as the distributor of a publication³ containing any such matter if at the time of distribution, having taken all reasonable care, he does not know that it contains such matter and has no reason to suspect that it is likely to do so⁴.

1 As to matters to which the rule applies see para 411 ante.

2 Contempt of Court Act 1981 s 3(1). The burden of proof of any fact tending to establish a defence afforded by this provision to any person lies upon that person: s 3(3). As to the times at which proceedings are to be treated as active see para 415 ante.

3 For the meaning of 'publication' see para 412 ante.

4 Contempt of Court Act 1981 s 3(2). The burden of proof of any fact tending to establish a defence afforded by this provision to any person lies upon that person: s 3(3).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/418. Defence available at common law.

418. Defence available at common law.

Common law defences are expressly preserved, in that nothing in the statutory provisions¹ prejudices any defence available at common law to a charge of contempt of court under the strict liability rule².

1 Ie the Contempt of Court Act 1981 ss 1, 2, 3, 4, 5 (s 2 as amended): see paras 410-417 ante, 420 post.

2 Ibid s 6(a). See also para 403 text and note 3 ante.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/419. Consent required for institution of proceedings.

419. Consent required for institution of proceedings.

Proceedings for a contempt of court under the strict liability rule may not be instituted except by or with the consent of the Attorney General¹ or on the motion of a court having jurisdiction to deal with it².

These provisions³ apply only to contempts of court alleged already to have been committed; and do not apply to, and do not inhibit, applications for injunctive relief in respect of apprehended future contempts of court under the strict liability rule⁴.

1 The functions of the Attorney General may be discharged by the Solicitor General: see the Law Officers Act 1997 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529. See eg *R v Solicitor-General, ex p Taylor* (1995) Times, 14 August, DC (where it was held that judicial review does not lie of a decision by the Attorney General as to whether to bring proceedings for contempt of court under the Contempt of Court Act 1981 s 7).

2 Contempt of Court Act 1981 s 7. See also *Taylor v Topping* (1990) Times, 15 February, DC. For an instance of contempt proceedings brought by the court of its own motion see *Re Lonrho plc* [1990] 2 AC 154, [1989] 2 All ER 1100, HL.

Similar consent is required for the institution of proceedings for a contempt of court relating to the disclosure of a jury's deliberations: see para 434 post. As to the institution of proceedings for criminal contempt of court at common law see para 425 post.

The view has been expressed that, where a publication is alleged to constitute a contempt by prejudicing pending legal proceedings, the application to commit should not be heard until after the determination of the pending proceedings, since if the publication has in fact done any harm, the hearing of the application only emphasises that harm: see *R v Editor of Sunday Express* (1953) Times, 25 November, per Lord Goddard CJ.

3 I.e. the provisions of the Contempt of Court Act 1981 s 7.

4 *A-G v News Group Newspapers Ltd* [1987] QB 1 at 8, [1986] 2 All ER 833 at 836, CA, per Sir John Donaldson MR.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ii) Strict Liability/420. Publications exempted from the strict liability rule.

420. Publications exempted from the strict liability rule.

Generally, a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously¹ and in good faith².

A publication³ made as or as part of a discussion⁴ in good faith⁵ of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion⁶.

1 As to when a report of proceedings is to be treated as published contemporaneously see para 428 note 4 post.

2 See the Contempt of Court Act 1981 s 4(1); and para 428 et seq post.

3 For the meaning of 'publication' see para 412 ante.

4 The word 'discussion' is to be construed widely; in particular, it is not limited to the airing of views and the propounding and debating of principles and arguments: *A-G v English* [1983] 1 AC 116 at 143, [1982] 2 All ER 903 at 920, HL, per Lord Diplock.

5 See *A-G v Hislop* [1991] 1 QB 514 at 532, [1991] 1 All ER 911 at 924, CA, per Nicholls LJ.

6 Contempt of Court Act 1981 s 5. It is necessary to consider whether a publication falls within s 5 if the court has already decided that the publication satisfies the criterion laid down by s 2(2) (under which the strict liability rule applies to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced: see paras 411, 413 ante): *A-G v English* [1983] 1 AC 116 at 141, [1982] 2 All ER 903 at 918, HL, per Lord Diplock. The Contempt of Court Act 1981 s 5 does not take the form of a proviso or an exception to s 2(2), but stands on an equal footing with it; and if it is contended by a defendant that s 5 applies, it is for the prosecution to show that it does not: *A-G v English* supra at 141 and 918 per Lord Diplock. See also *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 49, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 886, DC, per Brooke J.

In the case of a newspaper article, the test under the Contempt of Court Act 1981 s 5 is not whether the article could have been written as effectively without the passages which fall within s 2(2), or whether some other phraseology might have been substituted for them that might have reduced the risk of prejudice, but whether the risk created by the words used was merely incidental to the discussion, which means 'no more than an incidental consequence of expounding its main theme': *A-G v English* supra at 143 and 920 per Lord Diplock.

UPDATE

420 Publications exempted from the strict liability rule

TEXT AND NOTES--The strict liability rule does not apply in relation to any publication (1) made in, for the purposes of, or incidental to proceedings of the National Assembly for Wales (as to which see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq); or (2) to the extent that it consists of a report of such proceedings which either is made by or under the authority of the Assembly or is fair and accurate and made in good faith: Government of Wales Act 2006 s 43.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(iii) Publications intended to Interfere with or Impede the Administration of Justice/421. In general.

(iii) Publications intended to Interfere with or Impede the Administration of Justice

421. In general.

Publications which are intended to impede or prejudice the administration of justice may be punishable as contempt of court at common law¹. The law in relation to what may be published concerning current legal proceedings is sometimes referred to as the sub judice rule. Publication contempt, when not falling within the strict liability rule, consists of the usual two elements, actus reus and mens rea².

The actus reus of this contempt is the impedance of or interference with the administration of justice by the court³. There must be a real risk of prejudice to the administration of justice⁴; and it seems that, in order for this to be the case, proceedings must be pending or imminent at the time of publication⁵.

The required mens rea is an intention to interfere with or impede the administration of justice; it seems that recklessness is not sufficient⁶. The intention may be inferred⁷.

The standard of proof which applies to contempts under this head is the criminal standard⁸.

1 Liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice is expressly preserved: see the Contempt of Court Act 1981 s 6(c); and para 403 note 3 ante.

It is clear that a publication which is not punishable as a contempt under the strict liability rule (eg because the proceedings are not active at the time of publication) may nevertheless be punishable as a contempt at common law: see eg *A-G v Times Newspapers Ltd* [1992] 1 AC 191, [1991] 2 All ER 398, HL. It appears that a single publication may constitute a contempt of court both under the strict liability rule and at common law: *A-G v Hislop* [1991] 1 QB 514 at 528, [1991] 1 All ER 911 at 921, CA, per Parker LJ, and at 532-533 and 924 per Nicholls LJ. See also *HM Advocate v Caledonian Newspapers Ltd* 1995 SLT 926 at 927, 929, HC, per Lord Hope. The wording of the Contempt of Court Act 1981 s 6(c) appears to admit such a possibility; moreover, s 6(c) has been referred to at the highest level as being a saving provision: see *A-G v Times Newspapers Ltd* supra at 215 and 413 per Lord Ackner; *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503 at 515, [1991] 1 WLR 1194 at 1206-1207, DC, per Bingham LJ.

As to the strict liability rule see para 410 et seq ante.

2 See *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503 at 519, [1991] 1 WLR 1194 at 1211 per Hodgson J; *A-G v Times Newspapers Ltd* [1992] 1 AC 191 at 202-203, 207, [1991] 2 All ER 398 at 401, 406, HL, per Lord Brandon of Oakbrook; *A-G v Newspaper Publishing plc* [1997] 3 All ER 159, [1997] 1 WLR 926, CA. As to actus reus and mens rea generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE.

3 *A-G v Times Newspapers Ltd* [1992] 1 AC 191 at 206-207, [1991] 2 All ER 398 at 405, HL, per Lord Brandon of Oakbrook. See also *Z Bank v D1* [1994] 1 Lloyd's Rep 656 at 660 (col 1) per Colman J.

4 *A-G v Hislop* [1991] 1 QB 514 at 526, [1991] 1 All ER 911 at 919, CA, per Parker LJ; *A-G v News Group Newspapers plc* [1989] QB 110 at 125, [1988] 2 All ER 906 at 914, DC, per Watkins LJ; *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503 at 516, [1991] 1 WLR 1194 at 1208, DC, per Bingham LJ, and at 518 and 1210 per Hodgson J; *A-G v Newspaper Publishing plc* [1997] 3 All ER 159 at 168, [1997] 1 WLR 926 at 936, CA, per Lord Bingham of Cornhill CJ. See also *A-G v Newspaper Publishing plc* [1988] Ch 333 at 378, [1987] 3 All ER 276 at 306-307, CA, per Lloyd LJ.

5 See para 424 post.

6 *A-G v Newspaper Publishing plc* [1988] Ch 333 at 374-375, [1987] 3 All ER 276 at 304, CA, per Sir John Donaldson MR, at 381-383 and 308-310 per Lloyd LJ, and at 387 and 313 per Balcombe LJ; *A-G v News Group Newspapers plc* [1989] QB 110 at 126, 128-130, [1988] 2 All ER 906 at 914, 916-917, DC, per Watkins LJ; *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503, [1991] 1 WLR 1194, DC. See also *A-G v Newspaper Publishing plc* [1997] 3 All ER 159 at 169, [1997] 1 WLR 926 at 936-937, CA, per Lord Bingham of Cornhill CJ; *R v Schot* [1997] 2 Cr App Rep 383, (1997) Times, 14 May, CA.

As to the concepts of intention and recklessness see further CRIMINAL LAW, EVIDENCE AND PROCEDURE.

7 See eg *A-G v Newspaper Publishing plc* [1988] Ch 333 at 374-375, [1987] 3 All ER 276 at 304, CA, per Sir John Donaldson MR, and at 383 and 310 per Lloyd LJ; *A-G v News Group Newspapers plc* [1989] QB 110 at 126-127, [1988] 2 All ER 906 at 914-915, DC, per Watkins LJ. See also *A-G v Newspaper Publishing plc* [1997] 3 All ER 159 at 169, [1997] 1 WLR 926 at 936-937, CA, per Lord Bingham of Cornhill CJ.

8 *A-G v Newspaper Publishing plc* [1988] Ch 333 at 362, [1987] 3 All ER 276 at 294, CA, per Sir John Donaldson MR; *A-G v News Group Newspapers plc* [1989] QB 110 at 124, [1988] 2 All ER 906 at 913, DC, per Watkins LJ; *A-G v Newspaper Publishing plc* [1997] 3 All ER 159 at 169, [1997] 1 WLR 926 at 936, CA, per Lord Bingham of Cornhill CJ.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(iii) Publications intended to Interfere with or Impede the Administration of Justice/422. Examples of publications which may be in contempt at common law.

422. Examples of publications which may be in contempt at common law.

Publications which have been found to be in contempt of court include: publication by a third party in a newspaper of material which was the subject of an injunction¹; publication by a magazine of articles intended to dissuade a plaintiff from continuing with litigation brought against the magazine²; and publication of a newspaper article with the specific intention of prejudicing a fair trial by bringing to the attention of the newspaper's readers, including potential jurors, damaging matters which would be inadmissible evidence in imminent criminal proceedings³.

A publication which exerts pressure on a litigant is not a contempt if it merely contains fair and temperate criticism⁴.

1 *A-G v Times Newspapers Ltd* [1992] 1 AC 191, [1991] 2 All ER 398, HL; *A-G v Newspaper Publishing plc* [1988] Ch 333, [1987] 3 All ER 276, CA; *A-G v Observer Ltd* [1988] 1 All ER 385. It seems that where the court has determined how justice is to be administered, any interference with that course of action is punishable as a contempt: see eg *A-G v Newspaper Publishing plc* supra at 370 and 300 per Sir John Donaldson MR. See also *Re Lonrho plc* [1990] 2 AC 154 at 212-213, [1989] 2 All ER 1100 at 1119, HL, per Lord Bridge of Harwich (in the absence of a court order, direct action by a litigant to secure the substance of the remedy which he is seeking in judicial proceedings does not amount to a contempt of court in relation to those proceedings); *A-G v Newspaper Publishing plc* [1997] 3 All ER 159 at 168, [1997] 1 WLR 926 at 936, CA, per Lord Bingham of Cornhill CJ (where the court did not accept that conduct by a third party which is inconsistent with a court order in only a trivial or technical way should expose a party to conviction for contempt).

2 *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA.

3 *A-G v News Group Newspapers plc* [1989] QB 110, [1988] 2 All ER 906, DC.

4 *A-G v Hislop* [1991] 1 QB 514 at 527, [1991] 1 All ER 911 at 920, CA, per Parker LJ.

UPDATE

422 Examples of publications which may be in contempt at common law

NOTE 3--See also *A-G v Punch Ltd* [2002] UKHL 50, [2003] 1 All ER 289.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(iii) Publications intended to Interfere with or Impede the Administration of Justice/423. Relevant date.

423. Relevant date.

In considering whether a contempt has been committed, all the circumstances must be assessed as they were at the date of publication, and without taking into account subsequent events¹.

¹ *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503 at 515, [1991] 1 WLR 1194 at 1206-1207, DC, per Bingham LJ, and at 532, 533 and 1225, 1229 per Hodgson J. See further para 424 post.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(iii) Publications intended to Interfere with or Impede the Administration of Justice/424. Proceedings pending or imminent.

424. Proceedings pending or imminent.

For contempt to be committed¹, it may be necessary for proceedings to be pending or imminent at the date of publication².

A criminal prosecution may be said to be pending for this purpose at any time after a person has been arrested and is in custody³. It is not necessary that the accused person should have been committed for trial⁴; nor is it necessary that he should have been brought before a court of summary jurisdiction⁵. Although there is no clear authority on the point, it seems that criminal proceedings are imminent if, at the date of the publication complained of, it is obvious that a suspect is about to be arrested for the crime⁶. A criminal cause is pending until the proceedings are finally concluded and no further appeal is possible, either because the rights of appeal have been exhausted or because the time for giving notice of appeal has elapsed⁷.

For the purposes of the law of contempt, civil proceedings are pending immediately a writ or other originating process is issued⁸. It would seem that civil proceedings are pending, and a contempt may be committed, until an appeal has been heard or the time within which an appeal may be lodged has expired⁹.

¹ Ie for there to be a real risk of prejudice to the administration of justice: see para 421 ante.

² Prior to the enactment of the Contempt of Court Act 1981, no publication calculated to prejudice the fair trial of criminal proceedings could amount to a contempt of court unless at the date of publication those proceedings were either pending or imminent: see eg *R v Parke* [1903] 2 KB 432 at 437 per Wills J ('It is possible very effectually to poison the fountain of justice before it begins to flow'); *R v Daily Mirror, ex p Smith* [1927] 1 KB 845 at 851 per Lord Hewart CJ; *R v Savundranayagan and Walker* [1968] 3 All ER 439n, [1968] 1 WLR 1761, CA. See also *R v Beaverbrook Newspapers Ltd and Associated Newspapers Ltd* [1962] NI 15. Cf, however, *James v Robinson* (1963) 109 CLR 593, Aust HC, in which it was decided that no contempt had been committed since proceedings although imminent were not pending. See also (1964) 80 LQR 166.

As to civil proceedings, it was clear that the law of contempt applied when proceedings were pending (*Dunn v Bevan* [1922] 1 Ch 276), but it was not clearly established whether the law of contempt applied when proceedings were merely imminent. There was some judicial authority for the view that comments made before civil proceedings were pending could not amount to a contempt: see *Re Crown Bank, Re O'Malley* (1890) 44 ChD 649; *Re Cornish, Staff v Gill* (1893) 9 TLR 196. See now also *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503 at 517-518, [1991] 1 WLR 1194 at 1229, DC, per Hodgson J. But cf *R v Parke* supra. In *A-G v Times Newspapers Ltd* [1974] AC 273, [1973] 3 All ER 54, HL, a publication was restrained as a contempt where, by agreement between the parties, writs had been issued in some cases but not in others; cf that case in the Court of Appeal at [1973] QB 710 at 740, [1973] 1 All ER 815 at 822, CA, per Lord Denning MR. See also the Administration of Justice Act 1960 s 11 (repealed), which provided a defence in respect of publications connected with imminent proceedings and which was not in terms limited to criminal process.

Since the enactment of the Contempt of Court Act 1981, however, where the contempt is intentional interference with the administration of justice, the relevance of imminence has been doubted: see *A-G v News Group Newspapers plc* [1989] QB 110 at 132-133, [1988] 2 All ER 906 at 919-920, DC, per Watkins LJ; *A-G v Sport Newspapers Ltd* supra at 517-518 and 1209-1210 per Bingham LJ. Having said that publication made with the intention of prejudicing proceedings which, although not in existence, are imminent may be contemptuous and punishable as such if it gives rise to the required risk of prejudice to the due administration of justice, Bingham LJ went on further to say that, if the risk and the intention are established, contempt may be committed even though proceedings are neither in existence nor imminent: *A-G v Sport Newspapers Ltd* supra at 515-516 and 1207 per Bingham LJ. See also *Coe v Central Television* [1994] EMLR 433 at 438-441, CA, per Glidewell LJ.

3 *R v Clarke, ex p Crippen* (1910) 27 TLR 32. In that case the accused was arrested on a warrant but it would seem that proceedings are pending from the moment of arrest, whether a warrant has been issued or not: see *James v Robinson* (1963) 109 CLR 593.

4 *R v Parke* [1903] 2 KB 432.

5 *R v Clarke, ex p Crippen* (1910) 27 TLR 32.

6 See *R v Savundranayagan and Walker* [1968] 3 All ER 439n at 441n, [1968] 1 WLR 1761 at 1764, CA, per Salmon LJ. See also *R v Beaverbrook Newspapers Ltd and Associated Newspapers Ltd* [1962] NI 15; *A-G v News Group Newspapers plc* [1989] QB 110 at 135, [1988] 2 All ER 906 at 921, DC, per Watkins LJ. Cf *Stirling v Associated Newspapers Ltd* 1960 SLT 5.

7 *R v Davies, ex p Delbert-Evans* [1945] KB 435, sub nom *Delbert-Evans v Davies and Watson* [1945] 2 All ER 167, DC; *R v Duffy, ex p Nash* [1960] 2 QB 188, [1960] 2 All ER 891, DC. Although proceedings can probably only be said to have determined finally when the House of Lords has heard and decided an appeal (*R v Duffy, ex p Nash* supra), or leave to appeal has been refused by that House, the likelihood that a publication would influence an appeal either to the Court of Appeal or to the House of Lords and thereby amount to a contempt is plainly very slight. Cf *Re Lonrho plc* [1990] 2 AC 154 at 209-210, [1989] 2 All ER 1100 at 1116-1117, HL, per Lord Bridge of Harwich.

Where a criminal trial has ended in the disagreement of the jury and a new trial is probable, it seems that a publication likely to prejudice a retrial may constitute a contempt: see *Re Labouchere, ex p Columbus Co Ltd* (1901) 17 TLR 578; *R v Freeman's Journal* [1902] 2 IR 82. See also *R v O'Dogherty* (1848) 5 Cox CC 348.

The publication in a newspaper of comment on the findings of a court-martial, while those findings remain subject to confirmation, may amount to a contempt, and will do so if the object of the comment is to bring pressure to bear on the confirming officer: see *R v Gunn, ex p A-G* [1954] Crim LR 53, DC.

8 *Dunn v Bevan* [1922] 1 Ch 276.

9 See *Dunn v Bevan* [1922] 1 Ch 276; *Kelly & Co v Pole* (1895) 11 TLR 405. See also the cases referred to in note 6 supra. But cf *Re Australian Consolidated Press Ltd, ex p Dawson* (1961) 61 SR (NSW) 573, NSW FC; *Dallas v Ledger, Re Ledger* (1888) 52 JP 328, DC; *Metzler v Gounod* (1874) 30 LT 264. See also *A-G v Times Newspapers Ltd* [1974] AC 273 at 301, [1973] 3 All ER 54 at 65, HL, per Lord Reid.

Even after the proceedings are finally concluded, comment may amount to contempt if a retrial is ordered or if comment is made on evidence in the case which is relevant in further civil proceedings: see *Re Marquis Townshend* (1906) 22 TLR 341, CA, where the point was left open. It is doubtful whether comment made before an application for a retrial has been lodged or heard constitutes a contempt: see *Metzler v Gounod* (1874) 30 LT 264; *Dallas v Ledger, Re Ledger* (1888) 52 JP 328, DC. It would seem that, in any event, comment may constitute a contempt if it is likely to deter a party from pursuing an appeal: cf *Re South Shields (Thames Street) Clearance Order 1931* (1932) 173 LT Jo 76.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(iii) Publications intended to Interfere with or Impede the Administration of Justice/425. Institution of proceedings.

425. Institution of proceedings.

It appears that the consent of the Attorney General is not required for the institution of contempt proceedings at common law¹, although the usual and desirable practice is for the complaining party to refer the matter and for the Attorney General to initiate the proceedings for contempt². Proceedings may also be brought on the motion of a court having jurisdiction to deal with the matter³.

1 *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503 at 536, [1991] 1 WLR 1194 at 1230, DC, per Hodgson J. See also *Z Bank v D1* [1994] 1 Lloyd's Rep 656 at 660 per Colman J. In *R v Hargreaves, ex p Dill* (1953) Times, 4 November, DC, Lord Goddard CJ expressed the view that 'it would be a good change if these actions were moved only by a Law Officer or on the instructions of the Attorney General, because the object is to punish an

editor who has committed contempt, not to assist the defence'. See also *R v Associated Newspapers Ltd, ex p Beyers* (1936) 80 Sol Jo 247, DC; *R v Duffy, ex p Nash* [1960] 2 QB 188 at 192 per Sir Reginald Manningham-Buller QC (in argument). But cf *A-G v Newspaper Publishing plc* [1988] Ch 333 at 362, [1987] 3 All ER 276 at 294 per Sir John Donaldson MR; *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370 at 425, [1991] 1 All ER 622 at 636, HL, per Lord Bridge of Harwich; *Dobson v Hastings* [1992] Ch 394 at 411, [1992] 2 All ER 94 at 108 per Sir Donald Nicholls V-C.

As to the requirement of consent for the institution of proceedings under the strict liability rule see para 419 ante.

2 The practice was approved by the House of Lords in respect of contempt arising out of civil proceedings in *A-G v Times Newspapers Ltd* [1974] AC 273 at 306, [1973] 3 All ER 54 at 69-70, HL, per Lord Morris, at 311 and 74 per Lord Diplock, and at 326 and 87 per Lord Cross.

If the Attorney General declines to take action it appears that the party aggrieved may nevertheless apply to the court to commit for contempt: see *A-G v Times Newspapers Ltd* supra at 293 and 59 per Lord Reid.

3 *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA.

The availability of summary contempt procedures in the case of publications prejudicing specific proceedings is preserved by the Contempt of Court Act 1981 s 6(c) (see para 421 ante): see *A-G v Hislop* supra; *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503 at 531, [1991] 1 WLR 1194 at 1224, DC, per Hodgson J.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(iii) Publications intended to Interfere with or Impede the Administration of Justice/426. Persons liable for contempt.

426. Persons liable for contempt.

A contempt may be committed by any person responsible for the publication of the matter of which complaint is made¹. Thus the following persons may be held liable for contempt: editors²; newspaper proprietors, publishers and printers³; distributors⁴; and their equivalents in radio and television broadcasting. It is possible that in certain circumstances, reporters may be liable⁵.

1 See also para 416 ante.

2 See eg *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA. See also *Re Lonrho plc* [1990] 2 AC 154, [1989] 2 All ER 1100, HL.

3 See eg *A-G v News Group Newspapers plc* [1989] QB 110, [1988] 2 All ER 906, DC (proprietor and publisher); *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA (company that published and printed magazine). See also *Re American Exchange in Europe Ltd, American Exchange in Europe Ltd v Gillig* (1889) 58 LJ Ch 706; *McLeod v St Aubyn* [1899] AC 549, PC; *Re Lonrho plc* [1990] 2 AC 154, [1989] 2 All ER 1100, HL. The proprietors of newspapers are often also the printers and publishers.

It seems that an individual director of a proprietary company may be punishable in contempt: see *Re Lonrho plc* supra (in this case, it was held that no contempt had taken place).

4 See eg *R v Griffiths, ex p A-G* [1957] 2 QB 192, [1957] 2 All ER 379, DC.

5 See *R v Griffiths, ex p A-G* [1957] 2 QB 192, [1957] 2 All ER 379, DC; *A-G v Sport Newspapers Ltd* [1992] 1 All ER 503, [1991] 1 WLR 1194, DC.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(iv) Defamation Proceedings/427. Defamation proceedings.

(iv) Defamation Proceedings

427. Defamation proceedings.

Special considerations apply to civil proceedings for libel and slander¹. Except where the strict liability rule is invoked², the issue of a writ for defamation does not automatically stifle further comment. Thus once a defendant has justified, and there is some prima facie support for the justification, a plaintiff cannot obtain an interlocutory injunction to restrain repetition by a defendant of the matters complained of; and similarly, in such a case, repetition of the matter by the defendant will not in general amount to a contempt of court³. Comment may, however, be restrained or punished as a contempt if it goes beyond mere repetition of the matters complained of⁴, or if it is comment prompted by the issue of the writ⁵, or if it is intended to prejudice the fair trial of the issues raised in the defamation proceedings⁶.

Where a writ is issued for the purpose of stifling comment rather than with a genuine intention of pursuing a claim against the defendant, the court will refuse an application to punish or restrain comment on the proceedings⁷.

1 As to libel and slander generally see LIBEL AND SLANDER.

2 The strict liability rule will prevail in any case in which it is invoked, because the balance will always come down in favour of protecting the right to justice: *A-G v News Group Newspapers Ltd* [1987] QB 1 at 14-15, [1986] 2 All ER 833 at 841, CA, per Sir John Donaldson MR. As to the strict liability rule see para 410 et seq ante.

3 *Thomson v Times Newspapers Ltd* [1969] 3 All ER 648 at 651, [1969] 1 WLR 1236 at 1240, CA, per Salmon LJ. See also *Cronmire v Daily Bourse Ltd* (1892) 9 TLR 101; *Bonnard v Perryman* [1891] 2 Ch 269, CA. It has also been said that repetition by persons other than the defendant would not constitute a contempt: see *Thomson v Times Newspapers Ltd* supra at 651 and 1240 per Salmon LJ. Where a plaintiff in a libel action, in defending himself publicly against serious charges made against him in a newspaper edited by the defendant, and without intending to prejudice the pending action, incidentally referred to the subject matter of the action, it was held that a writ of attachment should not issue: *Potter v Clawson* (1912) 47 L Jo 735.

4 In such a case the normal principles relating to contempt would apply: see para 421 et seq ante. See also *A-G v Hislop* [1991] 1 QB 514 at 531, [1991] 1 All ER 911 at 923, CA, per Nicholls LJ.

5 See *Re Labouchere, Kensit v Evening News Ltd* (1901) 18 TLR 208, DC; *Phillips v Hess* (1902) 18 TLR 400.

6 *R v Blumenfeld, ex p Tupper* (1912) 28 TLR 308; *Higgins v Richards* (1912) 28 TLR 202; *R v Daily Mail, ex p Factor* (1928) 44 TLR 303; *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA; cf *Superintendent and Remembrancer of Legal Affairs, Bihar v Murali* (1941) 20 Pat 306.

7 *R v Daily Mail, ex p Factor* (1928) 44 TLR 303. See also *R v Fox, ex p Mosley* (1966) Times, 17 February (writ issued not for serious purpose but in order to allow the plaintiff to air his political views); *Wallersteiner v Moir* [1974] 3 All ER 217, [1974] 1 WLR 991, CA ('gagging' writ to prevent discussion of company affairs).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(v) Reporting of Court Proceedings/428. Contemporary reports of proceedings.

(v) Reporting of Court Proceedings

428. Contemporary reports of proceedings.

Subject to certain exceptions¹, a person is not guilty of contempt of court under the strict liability rule² in respect of a fair and accurate report³ of legal proceedings held in public, published contemporaneously⁴ and in good faith⁵.

In any such proceedings the court may, where it appears to be necessary⁶ for avoiding a substantial risk⁷ of prejudice to the administration of justice⁸ in those proceedings⁹, or in any other proceedings pending or imminent¹⁰, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose¹¹. Such orders must be formulated in precise terms and committed to writing either by the judge personally or by the clerk of the court under the judge's directions¹². Publication in breach of such an order is a contempt of court¹³.

A person aggrieved¹⁴ may appeal to the Court of Appeal, if that court grants leave, against an order made in relation to a trial on indictment¹⁵. The Court of Appeal does not review the exercise of the judge's discretion but exercises its own discretion in deciding whether or not an order should be made¹⁶. The decision of the Court of Appeal is final¹⁷. Where there is no right of appeal from the making of an order, an application may be made for judicial review of the order¹⁸.

1 See paras 429-432 post.

2 As to the strict liability rule see para 410 et seq ante.

3 At common law, a fair and accurate report was not a contempt of court: *R v Kray* (1969) 53 Cr App Rep 412. See also *Bellitti v Canadian Broadcasting Corp* (1974) 15 CCC (2d) 300, 2 OR (2d) 232. As to the meaning of 'fair and accurate' at common law see *R v Evening News, ex p Hobbs* [1925] 2 KB 158. However, the common law has now been superseded by the statutory provisions of the Contempt of Court Act 1981.

4 For these purposes, a report of proceedings is to be treated as published contemporaneously (1) in the case of a report of which publication is postponed pursuant to an order under the Contempt of Court Act 1981 s 4(2) (see the text and note 11 infra), if published as soon as practicable after that order expires; (2) in the case of a report of committal proceedings of which publication is permitted by virtue only of the Magistrates' Courts Act 1980 s 8(3) (as amended) (see MAGISTRATES vol 29(2) (Reissue) para 677), if published as soon as practicable after publication is so permitted: Contempt of Court Act 1981 s 4(3).

5 Ibid s 4(1). As to the meaning of 'good faith' see *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 798, [1982] 2 All ER 269 at 290, CA, per Shaw LJ.

6 As to the meaning of 'necessary' in this context see *MGN Pension Trustees Ltd v Bank of America National Trust and Savings Association* [1995] 2 All ER 355 at 361-362, 368, [1995] EMLR 99 at 107-108, 115 per Lindsay J.

7 As to the meaning of 'substantial' in this context see *MGN Pension Trustees Ltd v Bank of America National Trust and Savings Association* [1995] 2 All ER 355 at 361, [1995] EMLR 99 at 107 per Lindsay J.

8 In assessing the risk of prejudice to the administration of justice, each case will turn on its own facts, and it is wrong to categorise a statement that an accused person faces other charges of a similar nature as one which is inherently likely to create the requisite risk: *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 48, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 885, DC, per Brooke J.

9 On their true construction, the words 'those proceedings' do not encompass, during committal proceedings in the magistrates' court, the potential trial in the Crown Court: *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 789, [1982] 2 All ER 269 at 283, CA, per Lord Denning MR, at 798 and 290 per Shaw LJ, and at 807 and 296 per Ackner LJ. See also note 10 post.

10 The potential trial in the Crown Court following committal proceedings in a magistrates' court is 'pending' during the committal proceedings and at all times after the suspect is charged: *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 797, [1982] 2 All ER 269 at 289, CA, per Shaw LJ, and at 807 and 297 per Ackner LJ. See also note 9 ante.

Where in proceedings for any offence which is an administration of justice offence for the purposes of the Criminal Procedure and Investigations Act 1996 s 54 (acquittal tainted by an administration of justice offence: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1276) it appears to the court that there is a possibility that, by virtue of that provision, proceedings may be taken against a person for an offence of which

he has been acquitted, the Contempt of Court Act 1981 s 4(2) applies as if those proceedings were pending or imminent: s 4(2A) (added by the Criminal Procedure and Investigations Act 1996 s 57(2), (3)).

11 Contempt of Court Act 1981 s 4(2). This provision encompasses committal proceedings before magistrates to which the special reporting restrictions apply (see the Magistrates' Courts Act 1980 s 8 (as amended); and MAGISTRATES vol 29(2) (Reissue) para 677): *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 788-789, [1982] 2 All ER 269 at 283, CA, per Lord Denning MR, and at 797-798 and 289 per Shaw LJ.

The powers of the court to postpone publication under the Contempt of Court Act 1981 s 4(2) are exhaustive, and there is no power inherent in the court outside the terms of that provision: *R v Newtownabbey Magistrates' Court, ex p Belfast Telegraph Newspapers Ltd* (1997) Times, 27 August.

Where it is possible to achieve by other means the result which an order under the Contempt of Court Act 1981 s 4(2) is intended to achieve, such an order may not be made: *Re Central Independent Television plc* [1991] 1 All ER 347 at 350, sub nom *Ex p Central Television plc* [1991] 1 WLR 4 at 8, CA, per Lord Lane CJ. In the case of a split indictment giving rise to more than one trial, such other means may include extending the period between trials or transferring a subsequent trial to a court in another part of the country: *R v Beck, ex p Daily Telegraph plc* [1993] 2 All ER 177 at 181, CA, per Farquharson LJ. Even where it is not possible to achieve the result by other means, the court must consider whether it is necessary to make an order: *Ex p The Telegraph plc* [1993] 2 All ER 971 at 976-977, [1993] 1 WLR 980 at 985-986, CA, per Lord Taylor CJ; *R v Beck, ex p Daily Telegraph plc* supra at 182 per Farquharson LJ; *MGN Pension Trustees Ltd v Bank of America National Trust and Savings Association* [1995] 2 All ER 355 at 362-363, [1995] EMLR 99 at 108-109 per Lindsay J. In deciding whether an order should be made, a factor which may be taken into account by the court is the manner in which the press have conducted themselves: *Re Central Independent Television plc*, sub nom *Ex p Central Television plc* supra at 349 and 7-8 per Lord Lane CJ; *MGN Pension Trustees Ltd v Bank of America National Trust and Savings Association* supra at 366 and 113 per Lindsay J.

The court has a discretionary power to hear representations from the press: *R v Clerkenwell Metropolitan Stipendiary Magistrate, ex p Telegraph plc* [1993] QB 462 at 471, sub nom *R v Clerkenwell Magistrates Court, ex p Telegraph plc* [1993] 2 All ER 183 at 189, DC, per Mann LJ, and at 472 and 189 per Leonard J. In practice it will be convenient if the press are able to present a single view: see *R v Clerkenwell Metropolitan Stipendiary Magistrate, ex p Telegraph plc*, sub nom *R v Clerkenwell Magistrates Court, ex p Telegraph plc* supra at 471 and 189 per Mann LJ, and at 472 and 189 per Leonard J; *R v Beck, ex p Daily Telegraph plc* supra at 182 per Farquharson LJ.

As a matter of practice, it is desirable for issues relating to the making of orders under the Contempt of Court Act 1981 s 4(2) to be dealt with in advance of the hearing, the reporting of which they affect: see *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 46, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 882, DC, per Mann LJ, and at 48, 50 and 884, 887 per Brooke J; *R v Beck, ex p Daily Telegraph plc* supra at 182 per Farquharson LJ. See also *R v Tower Bridge Magistrates' Court, ex p Osborne* (1989) 88 Cr App Rep 28 at 30-31, DC, per Watkins LJ.

It seems that an order may properly distinguish in an appropriate case between broadcasting and other media: *Re Central Independent Television plc*, sub nom *Ex p Central Television plc* supra at 350 and 9 per Lord Lane CJ.

An application for an order under the Contempt of Court Act 1981 s 4(2) may be stood over with liberty to restore should there be a change in circumstances: *MGN Pension Trustees Ltd v Bank of America National Trust and Savings Association* supra at 369 and 116 per Lindsay J.

In cases prior to the passing of the Contempt of Court Act 1981 there was no obligation on a judge to give a warning to the press not to publish when such an obligation was both elementary and well-understood, for example the publication of matter relating to other offences or material which had deliberately been kept from the jury: see *R v Border Television Ltd, ex p A-G (Note)* (1978) 68 Cr App Rep 375 at 380, (1978) 122 Sol Jo 162 at 162, DC, per Lord Widgery CJ; *A-G v Leveller Magazine Ltd* [1979] AC 440 at 450, [1979] 1 All ER 745 at 750, HL, per Lord Diplock. It appears that the effect of the Contempt of Court Act 1981 s 4(2) is to give complete protection unless an order is made under that provision (see *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 792-793, [1982] 2 All ER 269 at 286, CA, per Lord Denning MR, and at 805 and 295 per Ackner LJ; *Re Central Independent Television plc*, sub nom *Ex p Central Television plc* supra at 350 and 8 per Lord Lane CJ; *A-G v Associated Newspapers Ltd* (1997) Independent, 6 November, CA; but see *A-G v Guardian Newspapers Ltd*, sub nom *A-G v Guardian Newspapers Ltd (No 3)* supra at 47 and 884 per Brooke J), and except in cases where there is an intention to interfere with or impede the administration of justice (see para 421 et seq ante).

12 See *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* [1983] 1 All ER 64, CA, [1982] 1 WLR 1475, CA. See also *R v Horsham Justices, ex p Farquharson* [1982] QB 762, [1982] 2 All ER 269, CA. The order must state its precise scope, the time at which it will cease to have effect, if appropriate, and the specific purpose of making the order: see *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* supra. A permanent record must be kept of such orders for future reference: see *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* supra.

Courts will normally give notice to the press in some form that an order has been made, but journalists and their editors are reminded that the onus is on them to ensure that no breach of any order occurs and to make inquiry

in any case of doubt: see *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* supra. The order should be reduced to writing and published at the first opportunity: *Re Central Independent Television plc* [1991] 1 All ER 347 at 350, sub nom *Ex p Central Television plc* [1991] 1 WLR 4 at 8, CA, per Lord Lane CJ. It may in some cases be appropriate for the judge to make plain whether and to what extent the making and terms of the order can be published: *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 46, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 882, DC, per Mann LJ, and at 48 and 884-885 per Brooke J.

13 *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 798, [1982] 2 All ER 269 at 290, CA, per Shaw LJ, and at 805 and 295 per Ackner LJ; *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 48, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 885, DC, per Brooke J.

Before the enactment of the Contempt of Court Act 1981, the court had power at common law to direct in exceptional circumstances that no report of court proceedings should be published until the proceedings had finally been determined, and any report made in defiance of the court's order was punishable as a contempt: *R v Clement* (1821) 4 B & Ald 218; *Scott v Scott* [1913] AC 417, HL.

14 'Person aggrieved' includes newspapers and press agencies (*R v Beck, ex p Daily Telegraph plc* [1993] 2 All ER 177 at 178-179, CA, per Farquharson LJ); and television and radio broadcasting companies (*Re Central Independent Television plc* [1991] 1 All ER 347 at 348, sub nom *Ex p Central Television plc* [1991] 1 WLR 4 at 7, CA, per Lord Lane CJ).

15 Criminal Justice Act 1988 s 159(1)(a). The appeal lies to the criminal division of the Court of Appeal: see s 159(2). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1934.

On an application for leave to appeal under s 159, a judge has power to give such directions as appear to him to be appropriate and, without prejudice to the generality of that power, may order the production in court of any transcript or note of proceedings or other document and give directions as to persons who are to be parties to the appeal or who may be parties to it if they wish, and as to service of documents upon any person; and the Court of Appeal has the same powers: s 159(3).

On the hearing of an appeal under s 159, the Court of Appeal has power to stay any proceedings in any other court until after the appeal is disposed of; to confirm, reverse or vary the order complained of; and to make such order as to costs as it thinks fit: s 159(5). The power to order that an appellant's costs be paid out of central funds, although not contained expressly in this provision, is to be implied: *Re Central Independent Television plc* [1991] 1 All ER 347 at 351, sub nom *Ex p Central Television plc* [1991] 1 WLR 4 at 9, CA, per Lord Lane CJ.

As to the giving of evidence, and the practice and procedure to be followed in relation to hearings in camera and appeals from orders for such hearings, see the Criminal Justice Act 1988 s 159(4), (6); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1934.

The appeal may be heard whether or not the order is already spent: *Re Central Independent Television plc*, sub nom *Ex p Central Television plc* supra at 351 and 9 per Lord Lane CJ.

It seems that, unless and until the order is varied or set aside on appeal, breach of the order is a contempt of court: *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 48, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 884-885, DC, per Brooke J.

16 *R v Beck, ex p Daily Telegraph plc* [1993] 2 All ER 177 at 180, CA, per Farquharson LJ.

17 Criminal Justice Act 1988 s 159(1).

18 *R v Horsham Justices, ex p Farquharson* [1982] QB 762, [1982] 2 All ER 269, CA; *R v Clerkenwell Metropolitan Stipendiary Magistrate, ex p Telegraph plc* [1993] QB 462, sub nom *R v Clerkenwell Magistrates Court, ex p Telegraph plc* [1993] 2 All ER 183, DC.

The National Union of Journalists has been held to have locus standi to apply for judicial review in these circumstances: see *R v Horsham Justices, ex p Farquharson* supra (in particular at 787-788 and 282 per Lord Denning MR).

A publisher (or, it seems, a reporter) may also be able to obtain a statement of case on law or jurisdiction: see *R v Clerkenwell Metropolitan Stipendiary Magistrate, ex p Telegraph plc*, sub nom *R v Clerkenwell Magistrates Court, ex p Telegraph plc* supra at 470 and 187 per Mann LJ.

UPDATE

428 Contemporary reports of proceedings

NOTE 11--*A-G v Associated Newspapers Ltd*, cited, reported at [1998] EMLR 711, DC. See *Ex p News Group Newspapers Ltd* (1999) Times, 21 May, CA. A court has no common law power to order that the publication of a report of proceedings held in open court be postponed: *Independent Publishing Co Ltd v A-G of Trinidad and Tobago; Trinidad and Tobago News Centre Ltd v A-G of Trinidad and Tobago* [2004] UKPC 26, [2005] 1 All ER 499, [2004] 3 WLR 611. *Ex p The Telegraph plc* cited, applied in *R v B* [2006] All ER (D) 348 (Oct), CA. There is no jurisdiction allowing for the repetition of an order with indefinite effect as the need for postponement can not continue beyond the end of proceedings: *Re Times Newspapers Ltd* [2007] EWCA Crim 1925, [2008] 1 WLR 234.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(v) Reporting of Court Proceedings/429. Publication of tape-recording of legal proceedings.

429. Publication of tape-recording of legal proceedings.

Except where leave to record is given¹, it is a contempt of court to publish a recording of legal proceedings made by means of any tape recorder or other instrument for recording sound², or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication³.

1 As to the granting of leave to record see para 407 note 9 ante. Where leave to record is given, it is a contempt of court to use any recording of legal proceedings in contravention of any conditions of the leave granted: see para 407 note 9 ante.

2 As to using a tape recorder (or other instrument for recording sound) in court see para 407 head (5) ante.

3 Contempt of Court Act 1981 s 9(1)(b). This provision does not apply to the making or use of sound recordings for the purposes of official transcripts of proceedings: see s 9(4).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(v) Reporting of Court Proceedings/430. Restrictions on reporting of criminal proceedings.

430. Restrictions on reporting of criminal proceedings.

The following statutory restrictions apply to the reporting of criminal proceedings:

- (1) reports of committal proceedings must be confined to the matters specified in the Magistrates' Courts Act 1980¹, unless the restriction on reporting is lifted²;
- (2) reports of applications for dismissal and preparatory hearings in prosecutions brought by the Serious Fraud Office must be confined to the matters specified in the Criminal Justice Act 1987³, unless the restriction on reporting is lifted⁴;

- (3) the publication of any report in a written publication or relevant programme⁵ of proceedings for certain sexual offences must not reveal any matter likely to lead members of the public to identify the alleged victim⁶, unless the restriction on reporting is lifted⁷;
- (4) the publication of any report of certain proceedings in which children or young persons are concerned, which reveals the name, address or school, or includes any particulars likely to lead to the identification of any child or young person concerned in the proceedings, or the publication of any picture of such child or young person is prohibited⁸;
- (5) the reporting otherwise than in a bona fide series of law reports or in certain publications of a technical character, of any indecent matter or indecent medical, surgical or physiological details, the publication of which would be calculated to injure public morals, is prohibited⁹; and
- (6) in certain circumstances it may be a contempt to publish any information relating to proceedings heard in camera¹⁰.

1 See the Magistrates' Courts Act 1980 s 8(1), (4) (as amended). The restrictions apply equally to written reports and to reports included in a relevant programme: see s 8(1) (as amended). 'Relevant programme' means a programme included in a programme service within the meaning of the Broadcasting Act 1990 s 102 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) para 458): see the Magistrates' Courts Act 1980 s 8(10) (as amended).

2 As to the lifting of reporting restrictions on committal proceedings see *ibid* s 8(2) (as amended); s 8(2A) (as added); s 8(2B) (as added and amended); and *R v Horsham Justices, ex p Farquharson* [1982] QB 762, [1982] 2 All ER 269, CA.

3 See the Criminal Justice Act 1987 s 11 (as substituted). The restrictions apply equally to written reports and to reports included in a relevant programme: see s 11(1), (16) (as substituted). 'Relevant programme' means a programme included in a programme service within the meaning of the Broadcasting Act 1990 s 102 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) para 458): see the Criminal Justice Act 1987 s 11(16) (as substituted).

4 As to the lifting of reporting restrictions on fraud proceedings see *ibid* s 11(3) (as substituted). It is an offence to publish a report in contravention of s 11: see s 11A (as added). A person guilty of an offence under this provision is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale: see s 11A(2) (as added). Proceedings for such an offence may not be instituted other than by or with the consent of the Attorney General: see s 11A(3) (as added). As to the standard scale see para 407 note 8 ante.

5 'Relevant programme' means a programme included in a programme service within the meaning of the Broadcasting Act 1990 s 102 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) para 458): see the Sexual Offences (Amendment) Act 1976 s 4(6) (as substituted).

6 See the Sexual Offences (Amendment) Act 1976 s 4(1) (as substituted and amended), s 4(1A) (as added); the Sexual Offences (Amendment) Act 1992; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 238 et seq. The Sexual Offences (Amendment) Act 1976 s 4(1) (as substituted and amended) expressly preserves the right to publish or include in a relevant programme matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence. Nothing in this provision affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or upon matter included in a relevant programme; and a direction in pursuance of this provision does not affect the operation of s 4(1) (as substituted and amended) at any time before the direction is given: see s 4(7) (as amended).

It is an offence to publish matter, or include it in a relevant programme, in contravention of s 4(1) (as substituted and amended); and a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 4(5) (as amended).

7 As to the lifting of reporting restrictions see *ibid* s 4(2), (3) (as amended), s 4(4); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 238.

8 See the Children and Young Persons Act 1933 s 49 (as substituted and amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) paras 1272-1274. In addition, restrictions may be placed on reporting particulars of a child or young person in any proceedings in any court: see s 39 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 1271.

See *Ex p Crook* [1995] 1 All ER 537, [1995] 1 WLR 139, CA, for guidance as to the procedure which should be followed when the court makes an order under the Children and Young Persons Act 1933 s 39 (as amended).

Section 39(1) (as amended) does not give the court power to order that the name of a defendant should not be published, although that will often be the effect in practice of making an order under this provision: *Ex p Godwin* [1992] QB 190 at 196-197, sub nom *R v Southwark Crown Court, ex p Godwin* [1991] 3 All ER 818 at 822-83, CA, per Glidewell LJ; *Ex p Crook* supra at 543 and 145 per Glidewell LJ.

An order under the Children and Young Persons Act 1933 s 39 (as amended) may only be made by the court in which the proceedings are pending: *R v Lee* [1993] 2 All ER 170 at 174, [1993] 1 WLR 103 at 108, CA, per Lloyd LJ (the Court of Appeal had no jurisdiction to make such an order in relation to proceedings pending in the Crown Court).

The judge has a complete discretion to allow representations to be made on behalf of those whom he considers to have a legitimate interest in the making of, or opposing the making of, an order restricting publication under the Children and Young Persons Act 1933 s 39 (as amended): *Ex p Crook* supra at 541 and 143 per Glidewell LJ. See also *R v Lee* supra at 176 and 110 per Lloyd LJ.

A person aggrieved by the making of an order restricting publication under the Children and Young Persons Act 1933 s 39 (as amended) may renew his application to the Crown Court, being the court which made the order, in the event of any change in circumstances, or may appeal to the Court of Appeal under the Criminal Justice Act 1988 s 159 (see para 428 ante): *R v Lee* supra at 176 and 110 per Lloyd LJ. A defendant in proceedings in the Crown Court may challenge the withholding or discharging of an order made under the Children and Young Persons Act 1933 s 39 (as amended) either by renewing his application to the Crown Court in the event of any change in circumstances, or by making an application to the Divisional Court of the Queen's Bench Division for judicial review (in which case the Crown Court may give a temporary direction under the Children and Young Persons Act 1933 s 39 or grant a stay of the order discharging the direction under s 39 pending an application to the Divisional Court for judicial review): *R v Lee* supra at 173, 176 and 107, 110-111 per Lloyd LJ; *R v Leicester Crown Court, ex p S (A Minor)* [1992] 2 All ER 659, [1993] 1 WLR 111n, DC. As to judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

An order made under the Children and Young Persons Act 1933 s 39 (as amended) may be revoked by the court: *R v Cambridge District Health Authority, ex p B (No 2)* [1996] 1 FLR 375, CA (order revoked to allow father to seek publicity on behalf of his daughter in order to raise funds for medical treatment).

9 See the Judicial Proceedings (Regulation of Reports) Act 1926 s 1(1)(a), (4); and PRESS, PRINTING AND PUBLISHING. See also para 431 post.

10 See the Administration of Justice Act 1960 s 12 (as amended); and para 431 post.

UPDATE

430 Restrictions on reporting of criminal proceedings

TEXT AND NOTES--As to reporting directions in relation to witnesses in criminal proceedings who have attained the age of 18 see the Youth Justice and Criminal Evidence Act 1999 s 46; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1430.

TEXT AND NOTES 6, 7--1976 Act s 4 repealed: 1999 Act Sch 2 para 4, Sch 6.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(v) Reporting of Court Proceedings/431. Restrictions on reporting of civil proceedings.

431. Restrictions on reporting of civil proceedings.

The following statutory restrictions apply to the reporting of civil proceedings:

- (1) the reporting of any indecent matter or indecent medical, surgical or physiological details, the publication of which would be calculated to injure public morals, is prohibited¹;
- (2) where proceedings are brought for the dissolution of marriage, for nullity of marriage or judicial separation, any report of the proceedings must be confined to certain specified particulars²;
- (3) newspaper reports of family proceedings heard before a magistrates' court must be restricted to certain specified particulars³; and
- (4) the court has power in any proceedings to direct that no report of the proceedings should reveal the name, address, or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings⁴.

The restrictions in heads (1)-(3) above do not apply to reports in a bona fide series of law reports or in publications of a technical character intended for circulation among members of the legal or medical professions⁵.

The publication of information relating to proceedings⁶ before any court sitting in private⁷ is not of itself a contempt of court except in the following cases⁸:

- (a) where the proceedings relate to the exercise of the inherent jurisdiction of the High Court with respect to minors, are brought under the Children Act 1989, or otherwise relate wholly or mainly to the maintenance or upbringing of a minor⁹;
- (b) where the proceedings are brought under Part VIII of the Mental Health Act 1959¹⁰ or under any provision of that Act authorising an application or reference to be made to a Mental Health Review Tribunal or to a county court¹¹;
- (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published¹²;
- (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings¹³; and
- (e) where the court (having power to do so¹⁴) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published¹⁵.

Without prejudice to heads (a) to (e) above, the publication of the text or a summary of the whole or part of an order made by a court sitting in private is not of itself contempt of court except where the court (having power to do so) expressly prohibits the publication¹⁶.

1 See the Judicial Proceedings (Regulation of Reports) Act 1926 s 1(1)(a); and PRESS, PRINTING AND PUBLISHING.

2 See ibids 1(1)(b); and the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968. As from a day to be appointed the Judicial Proceedings (Regulation of Reports) Act 1926 s 1(1)(b) is amended to include any proceedings under the Family Law Act 1996 Pt II (ss 2-25): see s 66(1), Sch 8 Pt I para 2. At the date at which this volume states the law no such day had been appointed. See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1015; PRESS, PRINTING AND PUBLISHING.

Prosecution for an offence under these provisions requires the sanction of the Attorney General: see the Judicial Proceedings (Regulation of Reports) Act 1926 s 1(3). See also *Duchess of Argyll v Duke of Argyll* [1967] Ch 302, [1965] 1 All ER 611.

3 See the Magistrates' Courts Act 1980 s 71(1) (as substituted and amended), s 71(1A), (1B) (as added), s 71(2) (as amended). See further PRESS, PRINTING AND PUBLISHING. For the meaning of 'family proceedings' see s 65 (as amended); and MAGISTRATES. Any person acting in contravention of this provision is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see s 71(3) (as amended). As to the standard scale see para 407 note 8 ante. No prosecution for an offence under this provision may be begun without the consent of the Attorney General: see s 71(4).

4 See the Children and Young Persons Act 1933 s 39(1) (as amended); para 430 note 8 ante; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 1271.

5 See the Judicial Proceedings (Regulation of Reports) Act 1926 s 1(4); the Magistrates' Courts Act 1980 s 71(5); and PRESS, PRINTING AND PUBLISHING.

6 'Proceedings' includes not only a report of the hearing before the judge, but also statements of evidence, reports, accounts of interviews and other documents which are prepared for use in court: *Re F (or se A) (A Minor) (Publication of Information)* [1977] Fam 58 at 87, 90, [1977] 1 All ER 114 at 121, 123, CA, per Lord Denning MR, and at 105 and 135 per Geoffrey Lane LJ. See also *Re S (Minors) (Wardship: Police Investigation)* [1987] Fam 199, [1987] 3 All ER 1076 (case records upon which evidence placed before the court was based but which did not form part of that evidence do not fall within the scope of the Administration of Justice Act 1960 s 12(1) (as amended)).

7 For these purposes, references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers: Administration of Justice Act 1960 s 12(3).

8 See the Administration of Justice Act 1960 s 12(1). See also *Hodgson v Imperial Tobacco Ltd* [1998] 2 All ER 673, CA.

The Administration of Justice Act 1960 s 12 (as amended) is a clarification of existing law, which otherwise continues in force: *Re F (or se A) (A Minor) (Publication of Information)* [1977] Fam 58 at 101, [1977] 1 All ER 114 at 132, CA, per Scarman LJ. See also *Re Martindale* [1894] 3 Ch 193; *Re De Beaujeu's Application for Writ of Attachment against Cudlipp* [1949] Ch 230, [1949] 1 All ER 439; *Re R (M) (A Minor) (Publication of Transcript)* [1975] Fam 89, [1975] 2 All ER 749.

It is, at least prima facie, a contempt to publish information relating to the proceedings in the cases indicated in the Administration of Justice Act 1960 s 12(1)(a)-(e) (as amended) (see heads (a)-(e) in the text): *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370 at 416, [1991] 1 All ER 622 at 629, HL, per Lord Bridge of Harwich (proceedings before a mental health review tribunal); *Re F (or se A) (A Minor) (Publication of Information)* supra at 99 and 130 per Scarman LJ (wardship proceedings). Where what is alleged is an infringement of the privacy of proceedings, it is not necessary to find a threat to or interference with the administration of justice: *Official Solicitor v Newsgroup Newspapers* [1994] 2 FCR 552 at 562 per Connell J.

Nothing in the Administration of Justice Act 1960 s 12 (as amended) is to be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this provision: s 12(4). The precise meaning of s 12(4) is obscure, but it is clear that unless a publication would have been a contempt at common law, it is not punishable under s 12 (as amended): *Re F (or se A) (A Minor) (Publication of Information)* supra at 87 and 120 per Lord Denning MR, at 99 and 131 per Scarman LJ, and at 105 and 135 per Geoffrey Lane LJ.

No contempt is committed unless knowledge of the existence or imminence of proceedings before a court sitting in private is proved, the burden of proof being on the applicant: *Re F (or se A) (A Minor) (Publication of Information)* supra at 100 and 131 per Scarman LJ, and at 107 and 137 per Geoffrey Lane LJ. The standard of proof is the criminal standard: *Official Solicitor v Newsgroup Newspapers* supra at 556 per Connell J. As to the criminal standard of proof see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1372. Honest mistake is a defence providing that had the mistaken circumstances been true, no offence would have been committed: *Re F (or se A) (A Minor) (Publication of Information)* supra at 107 and 137 per Geoffrey Lane LJ. Newspaper reporters are expected to know that proceedings under the Children Act 1989 are held in private and that there is a prohibition against publication (see head (a) in the text): *Official Solicitor v Newsgroup Newspapers* supra at 560 per Connell J, applying *Re F (or se A) (A Minor) (Publication of Information)* supra.

The Administration of Justice Act 1960 s 12 (as amended) establishes the restraints on publication which apply in all cases. However, the court may impose a wider restraint on publication in a particular case by granting an injunction prohibiting publication: *Re M and N (Minors) (Wardship: Publication of Information)* [1990] Fam 211 at 229, sub nom *Re M (Minors) (Wardship: Freedom of Publication)* [1990] 1 All ER 205 at 214, CA, per Lord Donaldson MR. For guidance on the imposition of such wider restraint see *Re M and N (Minors) (Wardship: Publication of Information)*, sub nom *Re M (Minors) (Wardship: Freedom of Publication)* supra at 229-231 and 215-216 per Lord Donaldson; the injunction substituted in this case by the Court of Appeal is reproduced at 228 and 213-214. See also *Re L (A Minor) (Wardship: Freedom of Publication)* [1988] 1 All ER 418. Cf *Pickering v Liverpool Daily Post and Echo Newspapers plc* supra at 425 and 636 per Lord Bridge of Harwich.

The court may give leave in a proper case to publish information relating to proceedings heard in private: *Re R (M) (A Minor) (Publication of Transcript)* supra at 96 and 755 per Rees J (wardship and adoption proceedings); *Official Solicitor v Newsgroup Newspapers* supra at 563 per Connell J (proceedings under the Children Act 1989). See also note 9 infra.

The reporting of proceedings of a court sitting in private is subject in addition to the same restrictions as the reporting of proceedings in open court, and the strict liability rule (see para 410 et seq ante) applies with equal force to both types of proceedings: *Pickering v Liverpool Daily Post and Echo Newspapers plc* supra at 425 and

636-637 per Lord Bridge of Harwich; *Re F (or se A) (A Minor) (Publication of Information)* supra at 88 and 121 per Lord Denning MR. See also *Re M and N (Minors) (Wardship: Publication of Information)* supra at 222-223 and 209-210 per Butler-Sloss LJ.

9 Administration of Justice Act 1960 s 12(1)(a) (substituted by the Children Act 1989 s 108(5), Sch 13 para 14). See also *Practice Direction (Wardship: Evidence)* [1987] 3 All ER 640, [1987] 1 WLR 1421. As to the inherent jurisdiction of the High Court with respect to minors, and the provisions of the Children Act 1989, see CHILDREN AND YOUNG PERSONS. If the information published relates to a ward, but not to the court's proceedings in respect thereto, the Administration of Justice Act 1960 s 12(1)(a) (as substituted) provides no protection and there is no contempt: *Re F (or se A) (A Minor) (Publication of Information)* [1977] Fam 58 at 88-89, [1977] 1 All ER 114 at 122, CA, per Lord Denning MR, and at 99 and 130 per Scarman LJ; *Re W (Wards) (Publication of Information)* [1989] 1 FLR 246; *Official Solicitor v Newsgroup Newspapers* [1994] 2 FCR 552 at 561 per Connell J. Cf *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370 at 423, [1991] 1 All ER 622 at 635, HL, per Lord Bridge of Harwich (the essential privacy which is protected by each of the exceptions in the Administration of Justice Act 1960 s 12(1)(a)-(d) (as amended) (see heads (a)-(d) in the text) attaches to the substance of the matters which the court has closed its doors to consider, not to the fact that the court will sit, is sitting or has sat at a certain date, time or place behind closed doors to consider those matters).

Transcripts of proceedings regarding wardship and other proceedings in private relating to children may be obtained by the parties without the leave of the court: *Practice Direction* [1972] 1 All ER 1056, sub nom *Practice Note* [1972] 1 WLR 443. As to wardship see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 218 et seq.

10 le the Mental Health Act 1959 Pt VIII (ss 100-121) (largely repealed: see now the Mental Health Act 1983 Pt VII (ss 93-113) (as amended)). See note 11 infra; and MENTAL HEALTH vol 30(2) (Reissue) para 671 et seq.

11 Administration of Justice Act 1960 s 12(1)(b). Although the Mental Health Act 1959 has been largely repealed and the law consolidated in the Mental Health Act 1983, and no corresponding revision has been made to the Administration of Justice Act 1960 s 12 (1)(b), it seems that this provision is to be read as though it had: see *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370 at 417, [1991] 1 All ER 622 at 629-630, HL, per Lord Bridge of Harwich. See also the Interpretation Act 1978 s 17(2); and STATUTES vol 44(1) (Reissue) para 1303. As to mental health tribunals see MENTAL HEALTH vol 30(2) (Reissue) para 560 et seq.

12 Administration of Justice Act 1960 s 12(1)(c).

13 Ibid s 12(1)(d).

14 As to the power of the court to prohibit publication see para 432 note 1 post.

15 Administration of Justice Act 1960 s 12(1)(e).

16 Ibid s 12(2).

UPDATE

431 Restrictions on reporting of civil proceedings

TEXT AND NOTE 2--1926 Act s 1(1)(b) further amended: Civil Partnership Act 2004 Sch 27 para 8(2).

NOTE 6--See *X v Dempster* [1999] 1 FLR 894 (publication of allegation regarding mother's fitness to take care of her child amounted to a contempt where the allegation had been made during proceedings).

NOTE 8--1960 Act s 12(4) (amended by the Children Act 2004 s 62(2)) applies in particular where the publication is not so punishable by reason of being authorised by rules of court.

For the purposes of the 1960 Act s 12 there is a publication whenever the law of defamation would treat there as being a publication: *Re B (a child) (disclosure)* [2004] EWHC 411 (Fam), [2004] 3 FCR 1 (mother in family proceedings disclosed material to Solicitor-General).

TEXT AND NOTE 9--Head (a) refers also to such proceedings brought under the Adoption and Children Act 2002: 1960 Act s 12(1) (amended by the 2002 Act s 101(2)).

TEXT AND NOTE 11--1960 Act s 12(1)(b) amended: Mental Capacity Act 2005 Sch 6 para 10; SI 2008/2833.

NOTE 15--A prohibition cannot be implied or inferred from an order that the proceedings be in private: *AF Noonan (Architectural Practice) Ltd v Bournemouth and Boscombe Athletic Community Football Club Ltd* [2007] EWCA Civ 848, [2007] 1 WLR 2614.

NOTE 16--See *Re G (minors) (celebrities: publicity)* [1999] 1 FLR 409, CA (balancing children's welfare against freedom of speech).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(v) Reporting of Court Proceedings/432. Publication of matters exempted from disclosure in court.

432. Publication of matters exempted from disclosure in court.

In any case where a court (having power to do so¹) allows a name or other matter to be withheld from the public in proceedings before the court², the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld³. Such orders must be formulated in precise terms and committed to writing either by the judge personally or by the clerk of the court under the judge's directions⁴.

Publication in breach of such an order is a contempt of court⁵.

A person aggrieved may appeal to the Court of Appeal, if that court grants leave, against an order made in relation to a trial on indictment⁶. The decision of the Court of Appeal is final⁷. Where there is no right of appeal from the making of an order, an application may be made for judicial review of the order⁸.

1 Such a power may derive from statute (eg the Defence Contracts Act 1958 s 4(3): see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 589) or from the court's inherent powers (eg where publicity would defeat the object of the proceedings): see 222 HL Official Report (5th Series), 24 March 1960, col 253. Thus the court may allow a defendant's address to be withheld from the court if it is necessary to do so in the interests of the due administration of justice (*A-G v Leveller Magazine Ltd* [1979] AC 440 at 449-450, [1979] 1 All ER 745 at 749-750, HL, per Lord Diplock), for example to protect the anonymity of a blackmail victim (*R v Socialist Worker Printers and Publishers Ltd, ex p A-G* [1975] QB 637, [1975] 1 All ER 142, DC); but may not do so for the benefit of the defendant's feelings or comfort (*R v Evesham Justices, ex p McDonagh* [1988] QB 553, [1988] 1 All ER 371, DC; *Birmingham Post and Mail Ltd v Birmingham City Council* (1993) 17 BMLR 116, (1993) Times, 25 November, DC; *R v Legal Aid Board, ex p Kaim Todner (a firm)* (1998) Independent, 12 June, CA). See para 431 head (e) ante. As to protection of the anonymity of a witness see para 435 text and note 14 post.

2 It appears that an application for leave to move for judicial review constitutes separate proceedings from the hearing of the substantive application; the court hearing an application for leave therefore has no jurisdiction to make an order under the Contempt of Court Act 1981 s 11 in respect of the hearing of the substantive application, and vice versa: *R v Westminster County Council, ex p Castelli* [1996] 2 FCR 49 at 54, [1996] 1 FLR 534 at 539, DC, per Latham J. See also *R v Somerset Health Authority, ex p S* [1996] COD 244.

3 Contempt of Court Act 1981 s 11.

The court may not give directions prohibiting publication of a name or other matter unless it has first allowed the name or other matter to be withheld from the public: *R v Arundel Justices, ex p Westminster Press Ltd* [1985] 2 All ER 390, [1985] 1 WLR 708, DC; *R v Newtownabbey Magistrates' Court, ex p Belfast Telegraph Newspapers Ltd* (1997) Times, 27 August. See also *A-G v Leveller Magazine Ltd* [1979] AC 440, [1979] 1 All ER 745, HL (witness's name discoverable by following up information given by him without protest in the course of his cross-examination); *R v Westminster County Council, ex p Castelli* [1996] 2 FCR 49 at 54, [1996] 1 FLR 534 at 539, DC, per Latham J (order under the Contempt of Court Act 1981 s 11 would be inappropriate in a case where the applicants' names were already in the public domain).

It seems that, where the court allows a name or other matter to be withheld, the absence of a direction not to publish will not necessarily constitute a defence to a charge of contempt: *R v Socialist Worker Printers and Publishers Ltd, ex p A-G* [1975] QB 637, [1975] 1 All ER 142, DC; cf *R v Border Television Ltd, ex p A-G* (1978) 68 Cr App Rep 375, [1978] Crim LR 221, DC.

For guidance on the way in which applications for an order under the Contempt of Court Act 1981 s 11 may be made, so as to protect the interests of applicants and other interested parties, see *R v Westminster County Council, ex p Castelli* supra at 539-540 and 55 per Latham J; *R v Tower Bridge Magistrates' Court, ex p Osborne* (1987) 88 Cr App Rep 28 at 30-31, DC, per Watkins LJ. See also *R v Somerset Health Authority, ex p S* [1996] COD 244.

4 See *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* [1983] 1 All ER 64, CA, [1982] 1 WLR 1475, CA. See also *R v Horsham Justices, ex p Farquharson* [1982] QB 762, [1982] 2 All ER 269, CA. The order must state its precise scope, the time at which it will cease to have effect, if appropriate, and the specific purpose of making the order: see *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* supra. A permanent record must be kept of such orders for future reference: *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* supra.

Courts will normally give notice to the press in some form that an order has been made, but journalists and their editors are reminded that the onus is on them to ensure that no breach of any order occurs and to make inquiry in any case of doubt: *Practice Note (Contempt of Court: Reports of Proceedings: Postponement)* supra. The order should be reduced to writing and published at the first opportunity: *Birmingham Post and Mail Ltd v Birmingham City Council* (1993) 17 BMLR 116, (1993) Times, 25 November, DC. It may in some cases be appropriate for the judge to make plain whether and to what extent the making and terms of the order can be published: see *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 46, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 882, DC, per Mann LJ, and at 48 and 884-885 per Brooke J (order made under the Contempt of Court Act s 4(2) (see para 428 text and note 11 ante), but it seems likely that similar principles apply to an order under s 11).

5 See *R v Horsham Justices, ex p Farquharson* [1982] QB 762 at 798, [1982] 2 All ER 269 at 290, CA, per Shaw LJ, and at 805 and 295 per Ackner LJ; *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 48, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 885, DC, per Brooke J (both decisions relating to orders made under the Contempt of Court Act 1981 s 4(2) (see para 428 text and note 11 ante), but it seems likely that similar principles apply to an order under s 11).

6 Criminal Justice Act 1988 s 159(1)(a). The appeal lies to the criminal division of the Court of Appeal: see s 159(2). See further para 428 note 15 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1934.

7 Ibid s 159(1).

8 *R v Arundel Justices, ex p Westminster Press Ltd* [1985] 2 All ER 390, [1985] 1 WLR 708, DC. See also para 428 text and note 18 ante.

UPDATE

432 Publication of matters exempted from disclosure in court

NOTE 3--See *Re D* [1998] 45 BMLR 191 (order preventing disclosure of identity of immigrant with AIDS was justified, notwithstanding that facts of case already in public domain); *Re Times Newspapers Ltd* [2007] EWCA Crim 1925, [2008] 1 WLR 234 (no scope under 1981 Act s 11 to prevent publication that did not make plain speculating on evidence given in camera; could constitute contempt at common law if published); *Re Times Newspapers Ltd* [2008] EWCA Crim 2396, [2009] 1 WLR 1015, [2008] All ER (D) 245 (Oct), C-MAC (court had to be satisfied that unless anonymity granted, immediate risk to life of defendant).

(vi) Scandalising the Court

433. Scandalising the court.

Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority is a contempt of court¹.

Thus scurrilous abuse of a judge or court, or attacks on the personal character of a judge, are punishable contempts². The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual judges of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired³. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a judge or a court⁴.

On the other hand, criticism of a judge's conduct or of the conduct of a court⁵, even if strongly worded, is not a contempt provided that the criticism is fair, temperate and made in good faith⁶ and is not directed to the personal character of a judge or to the impartiality of a judge or court⁷.

The offence of scandalising the court has been described as 'virtually obsolescent'⁸, and conduct which might otherwise be regarded as scandalising the court will now commonly be dealt with as contempt in the face of the court⁹.

1 *R v Gray* [1900] 2 QB 36 at 40 per Lord Russell CJ; *Badry v DPP of Mauritius* [1983] 2 AC 297, [1982] 3 All ER 973, PC. See also *R v New Statesman, ex p DPP* (1928) 44 TLR 301; *Ambard v A-G for Trinidad and Tobago* [1936] AC 322, [1936] 1 All ER 704, PC; *Perera v R* [1951] AC 482, PC. But see the text and notes 8-9 infra; and Walker 'Scandalising in the Eighties' (1985) 101 LQR 359.

The offence of scandalising the court does not generally extend to commissions and committees of inquiry: *Badry v DPP of Mauritius* supra, applying *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL. See, however, the Tribunals of Inquiry (Evidence) Act 1921 s 1(2)(c); and para 455 post.

2 *R v Gray* [1900] 2 QB 36; *R v Freeman* (1925) Times, 18 November (abusive letter sent to judge himself); *R v Wilkinson* (1930) Times, 16 July (attack alleging class bias on part of judge); but cf *McLeod v St Aubyn* [1899] AC 549, PC, in which many earlier authorities are collected. It seems that abuse of the jury (*R v White* (1808) 1 Camp 359n) or of the court as a whole (*R v Gray* supra at 40) may also constitute a contempt.

3 See *R v Davies* [1906] 1 KB 32 at 40. Thus a libel on a judge in his personal capacity which is not calculated to undermine or impair the authority of the court is not a contempt although it may be the subject of private proceedings for libel: see *Re Special Reference from the Bahama Islands* [1893] AC 138 at 148-149, PC; *McLeod v St Aubyn* [1899] AC 549 at 561, PC.

4 *R v New Statesman, ex p DPP* (1928) 44 TLR 301; *Badry v DPP of Mauritius* [1983] 2 AC 297, [1982] 3 All ER 973, PC. See also *A-G v O'Kelly* [1928] IR 308; *R v Borowski* [1971] 3 CCC (2d) 402, 19 DLR (3d) 537.

5 See eg *R v Metropolitan Police Comr, ex p Blackburn (No 2)* [1968] 2 QB 150, [1968] 2 All ER 319, CA.

6 Criticism which is intended merely to vilify a judge or which is published out of malice may amount to contempt: see *R v White* (1808) 1 Camp 359n; *R v Gray* [1900] 2 QB 36 at 40. Comment or criticism which is based on a mistake of fact is not necessarily a contempt if the critic was acting in good faith and in the honest belief that the criticism was accurate and well founded: see *Perera v R* [1951] AC 482, PC.

7 *Ambard v A-G for Trinidad and Tobago* [1936] AC 322, [1936] 1 All ER 704, PC. As to whether an allegation of partiality is automatically a contempt see *R v Nicholls* (1911) 12 CLR 280, Aust HC; *A-G v Blomfield* (1914) 33 NZLR 545; *R v New Statesman, ex p DPP* (1928) 44 TLR 301.

8 See *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339 at 347, [1984] 3 All ER 601 at 605, HL, per Lord Diplock.

9 See eg *Maharaj v A-G for Trinidad and Tobago* [1977] 1 All ER 411, PC (alleged contempt held to be mere discourtesy). As to contempt in the face of the court see para 406 et seq ante.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/434. Judges and juries.

(vii) Interference with Persons having Duties to discharge in Court

434. Judges and juries.

Any interference with a judge, by private communication or otherwise, for the purpose of influencing his decision in a case is a serious contempt¹. It is also a contempt to write threatening or abusive letters to a judge in relation to the exercise of his judicial functions².

Any improper interference with jurors while discharging their duties or while travelling to or from the court is a contempt³. It would also constitute a contempt to threaten or intimidate a juror, even after a case is concluded, in order to punish him for the manner in which he discharged his duty as juror⁴. It is a contempt of court to obtain, disclose⁵ or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings⁶. Proceedings for such a contempt of court may not be instituted except by or with the consent of the Attorney General⁷ or on the motion of a court having jurisdiction to deal with it⁸.

To impersonate a juror is an interference with justice and a serious contempt of court⁹.

1 *Re Dyce Sombre* (1849) 1 Mac & G 116 at 122; *Martin's Case* (1747) 2 Russ & M 674; *Re Ludlow Charities, Lechmere Charlton's Case* (1837) 2 My & Cr 316. As to publications intended to interfere with or impede the administration of justice see para 421 et seq ante.

2 *Re Ludlow Charities, Lechmere Charlton's Case* (1837) 2 My & Cr 316. As to scandalising the court see para 433 ante. As to wilful insults see also the Contempt of Court Act 1981 s 12(1)(a) (magistrates' court); the County Courts Act 1984 s 118 (as amended) (county court); and para 454 post.

3 *R v Martin* (1848) 5 Cox CC 356; *Re Johnson* (1887) 20 QBD 68, CA; *R v Goult* (1982) 76 Cr App Rep 140, [1983] Crim LR 103, CA; *R v Giscoombe* (1983) 79 Cr App Rep 79, CA; *R v Runtig* (1988) 89 Cr App Rep 243, [1989] Crim LR 282, CA. As to abuse of jurors in face of the court see *Ex p Pater* (1864) 5 B & S 299; and paras 406-407 ante. See also para 454 post. Embracery, or attempting to corrupt or influence a jury, is a form of contempt punishable on indictment: see 1 Hawk PC (8th Edn) c 27 at 466; 4 Bl Com 140. The specific offence of embracery is preserved (see the Criminal Law Act 1967 s 13(1)(a); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 729); but it will usually be preferable to proceed summarily for contempt (*R v Owen* [1976] 3 All ER 239, [1976] 1 WLR 840, CA).

4 *R v Martin* (1848) 5 Cox CC 356 (brother of convicted prisoner, who challenged the foreman of the jury to a duel immediately after the trial, was committed); *A-G v Judd* [1995] COD 15, (1994) Times, 15 August, DC. It is now an offence to intimidate or threaten a juror: see the Criminal Justice and Public Order Act 1994 s 51 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 726.

5 The Contempt of Court Act 1981 s 8 does not apply to any disclosure of any particulars (1) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or (2) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings, or to the publication of any particulars so disclosed: s 8(2). For this purpose, an appeal against conviction does not constitute subsequent proceedings: *R v Young (Stephen)* [1995] QB 324, [1995] 2 WLR 430, CA.

Except as provided by the Contempt of Court Act 1981 s 8(2), the prohibition on disclosure applies to all kinds of disclosure, including disclosure by a member of the jury and any subsequent disclosure, for example by publication in a newspaper: *A-G v Associated Newspapers Ltd* [1994] 2 AC 238, [1994] 1 All ER 556, HL.

6 Contempt of Court Act 1981 s 8(1). See eg *A-G v Judd* [1995] COD 15, (1994) Times, 15 August, DC (respondent held to have committed a contempt at common law by intimidation, and under the Contempt of Court Act 1981 s 8 by seeking details of jury voting).

This provision applies to the court itself, including the Court of Appeal, which may not, after verdict, inquire into what has passed between jurors in the jury room: *R v Young (Stephen)* [1995] QB 324, [1995] 2 WLR 430, CA; *R v Schot* [1997] 2 Cr App Rep 383, (1997) Times, 14 May, CA. However, a jury's stay in a hotel is a hiatus between sessions in the jury room and is not a period during which the jury as a whole is in the course of its deliberations, so that the Court of Appeal may inquire into what happened at the hotel: *R v Young (Stephen)* supra (use of a ouija board by four jurors in connection with the subject-matter of the trial, and discussion of the episode at breakfast with other jurors).

The Contempt of Court Act 1981 s 8 also applies to inquiries etc made of jurors by court officials, ushers and jury bailiffs: *R v Mickleburgh* [1995] 1 Cr App Rep 297 at 304, CA, per Lord Taylor CJ.

Even where inquiries made of a juror do not offend against the Contempt of Court Act 1981 s 8, they should be embarked upon only with the leave of the court: *R v McCluskey* (1994) 98 Cr App Rep 216 at 223, CA, per Henry J; *R v Mickleburgh* supra at 304 per Lord Taylor CJ.

7 The functions of the Attorney General may be discharged by the Solicitor General: see the Law Officers Act 1997 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529. See also para 419 note 1 ante.

8 Contempt of Court Act 1981 s 8(3). For an instance, see *A-G v Judd* [1995] COD 15, (1994) Times, 15 August, DC. See also *Taylor v Topping* (1990) Times, 15 February, DC (in the context of the Contempt of Court Act 1981 s 7); and para 419 ante. It seems likely that judicial review does not lie of a decision by the Attorney General as to whether to bring proceedings for contempt of court under the Contempt of Court Act 1981 s 8: see *R v Solicitor-General, ex p Taylor* (1995) Times, 14 August, DC; and para 419 note 1 ante.

9 *R v Levy* (1916) 32 TLR 238. The personation of a juror vitiates a criminal trial: *R v Wakefield* [1918] 1 KB 216, CCA.

UPDATE

434 Judges and juries

NOTES 5, 6--See *A-G v Seckerson* [2009] EWHC 1023 (Admin), [2009] EMLR 371, [2009] All ER (D) 106 (May), DC (statements made crossed line between general comment and disclosure of deliberations of jury).

NOTE 6--The 1981 Act s 8 applies only to third parties, not to a court; a court cannot be in contempt if it receives allegations relating to the conduct of a jury's deliberations and, acting within the established common law rules, decides to investigate them and disclose the results of the investigation to counsel: *R v Connor*; *R v Mirza* [2004] UKHL 2, [2004] 1 All ER 925; applied in *A-G v Scotcher* [2005] UKHL 36, [2005] 3 All ER 1.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/435. Witnesses.

435. Witnesses.

Any interference with a witness to a pending or imminent suit, the purpose or effect of which is to deter the witness from giving evidence or to influence the nature of the evidence given, is a serious interference with the administration of justice and a contempt of court¹.

The interference may take one of a number of forms. Thus it is a contempt to keep a witness out of the way, by bribery or otherwise, so as to avoid or prevent service of a subpoena²; to

assault, threaten or intimidate a witness or a person likely to be called as a witness³; to arrest a witness on the way to, or while attending, the court to give evidence⁴; to endeavour to influence a witness against a party by, for instance, disparagement of the party⁵; to endeavour by bribery to induce a witness to suppress evidence⁶; and to interfere with proper and reasonable attempts by a party's legal advisers to identify or interview potential witnesses⁷.

In order to establish a contempt in such circumstances, it must be shown that the contemnor was aware that the person concerned was a witness or a potential witness⁸ but it is unnecessary to show that the witness was actually deterred or influenced⁹.

It is also a contempt to assault, threaten or intimidate a witness after he has given evidence, or even after a case is concluded, if the predominant motive is to punish the witness for the evidence he has given¹⁰. Thus it is a contempt to assault a witness in the precincts of the court after the conclusion of a trial¹¹; to dismiss an employee because he has given evidence for the opposite party¹²; to remove a witness from office in an association because he has given evidence against the interests of the association¹³; or to publish the name of a witness when the court has directed that it should not be published¹⁴.

1 Those who have duties to perform in a court of justice are protected by the law and shielded on their way to the discharge of such duties, while discharging them, and on their return therefrom, that such persons may safely have resort to courts of justice: *Re Johnson* (1887) 20 QBD 68 at 74, CA, per Bowen LJ; *R v Runtig* (1988) 89 Cr App Rep 243, [1989] Crim LR 282, CA.

See also the Contempt of Court Act 1981 s 12(1)(a) (magistrates' court); the County Courts Act 1984 s 118 (as amended) (county court); and para 454 post.

Interference with witnesses may also constitute the offence of attempting to pervert the course of justice: see *R v Kellett* [1976] QB 372, [1975] 3 All ER 468, CA.

2 *Clement v Williams* (1836) 2 Scott 814; *Lewis v James* (1887) 3 TLR 527 (injunction granted to prevent further communication with a witness).

3 *Re B (JA) (an infant)* [1965] Ch 1112, [1965] 2 All ER 168; *R v Osbourne* (1992) Independent, 28 September, (1992) 14 Cr App Rep (S) 265, CA. As to the wilful insulting of a witness see also the Contempt of Court Act 1981 s 12(1)(a) (magistrates' court); the County Courts Act 1984 s 118 (as amended) (county court); and para 454 post.

4 *R v Hall* (1776) 2 Wm Bl 1110; *Cullins Case* (1653) Sty 395; *Vandeveld v Lluellin* (1662) 1 Keb 220; *Magnay v Burt* (1843) 5 QB 381, Ex Ch.

5 *Welby v Still* (1892) 66 LT 523.

6 *Re Hooley, Rucker's Case* (1898) 79 LT 306. The court declined to grant an attachment against a party to a civil action for merely dissuading a person from giving evidence for the opposite party: *Schlesinger v Flersheim* (1845) 2 Dow & L 737.

7 *Connolly v Dale* [1996] QB 120, [1996] 1 All ER 224, DC. The court has power to grant injunctive relief to prevent such interference: *Connolly v Dale* supra at 126 and 229 per Balcombe LJ, following *Peacock v London Weekend Television* (1985) 150 JP 71, CA.

8 *Re B (JA) (an infant)* [1965] Ch 1112, [1965] 2 All ER 168. It is uncertain whether it is necessary to establish that the act was done with the intention or purpose of deterring or influencing the witness: cf the judgments of Lord Denning MR and Donovan LJ in *Re A-G's Application, A-G v Butterworth* [1963] 1 QB 696, [1962] 3 All ER 326, CA. See also *A-G v Newspaper Publishing plc* [1988] Ch 333 at 374, [1987] 3 All ER 276 at 303, CA, per Sir John Donaldson MR, at 383 and 310 per Lloyd LJ, and at 387 and 313 per Balcombe LJ; *Connolly v Dale* [1996] QB 120 at 125-126, [1996] 1 All ER 224 at 229, DC, per Balcombe LJ.

9 *Re B (JA) (an infant)* [1965] Ch 1112, [1965] 2 All ER 168; but see *Schlesinger v Flersheim* (1845) 14 LJB 97.

10 *Rowden v Universities Co-operative Association Ltd* (1881) 71 LT Jo 373; *Re A-G's Application, A-G v Butterworth* [1963] 1 QB 696, [1962] 3 All ER 326, CA; *Moore v Clerk of Assize, Bristol* [1972] 1 All ER 58, [1971] 1 WLR 1669, CA.

The principle on which the general rule is based is that such conduct is likely to deter witnesses for the future and thereby interfere with the administration of justice: see *Connolly v Dale* [1996] QB 120 at 125, [1996] 1 All ER 224 at 228, DC, per Balcombe LJ. It seems, however, that victimisation of a witness may amount to a contempt even if it is not made public and thus is not likely to affect other potential witnesses: see *Chapman v Honig* [1963] 2 QB 502, [1963] 2 All ER 513, CA; *Moore v Clerk of Assize, Bristol* supra.

11 *Purdin v Roberts* (1910) 74 JP Jo 88.

12 *Rowden v Universities Co-operative Association Ltd* (1881) 71 LT Jo 373. It is probable that it would be a contempt to dismiss an employee because he was about to give evidence or because he intended to be, or was, absent from work in order to attend court as a witness. As to dismissal from employment generally see EMPLOYMENT vol 40 (2009) PARA 679 et seq.

13 *Re A-G's Application, A-G v Butterworth* [1963] 1 QB 696, [1962] 3 All ER 326, CA; but see *Chapman v Honig* [1963] 2 QB 502, [1963] 2 All ER 513, CA (notice to quit served to punish tenant for having given evidence against landlord). It is doubtful whether a witness is entitled in any event to recover damages from the contemnor in respect of an act which would otherwise be lawful: cf the judgments of Pearson LJ and Lord Denning MR in *Chapman v Honig* supra.

14 *R v Socialist Worker Printers and Publishers Ltd, ex p A-G* [1975] QB 637, [1975] 1 All ER 142, DC (publication of witness's name in blackmail proceedings). See also para 432 ante.

UPDATE

435 Witnesses

NOTE 9--The mere fact of a person who has been in court talking to a potential witness outside court does not, of itself, amount to contempt in the face of the court: *R v Jales* [2007] EWCA Crim 393, [2007] All ER (D) 263 (Jan).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/436. Parties.

436. Parties.

Deterring or obstructing a party from bringing or continuing proceedings or inducing a party to suppress evidence or give false evidence is an interference with the administration of justice and constitutes contempt of court¹. The following are instances of contempt by obstruction of parties: a husband by menaces compelling his wife to put in an untrue answer²; assaulting, threatening, or intimidating a party to deter that party from commencing or continuing a suit³; a denial by a prison governor of a prisoner's right of access to the court⁴; endeavouring by bribery to induce a party to suppress evidence which it is his duty to give⁵; preventing a minor from obeying an order of the court⁶; endeavouring to persuade a stepfather to forego the access to a ward accorded to him by an order of the court⁷; and, in certain circumstances, serving process on a party while he is attending proceedings in court⁸.

It has also been held to be a contempt to interfere with or obstruct a party after the trial has been completed⁹.

1 See eg *R v Runtig* (1988) 89 Cr App Rep 243, CA (a defendant and witnesses, and indeed anyone else who has a duty to perform at a court, is entitled to go to and from the court without being molested or assaulted or threatened with molestation; in this case, persistent attempts to photograph the defendant leaving court, though offensive, did not amount to contempt). As to publications (eg by speeches or writings) commenting or reflecting on parties or proceedings see *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA. See also paras 410 et seq, 421 et seq ante.

2 *Ex p Halsam* (1740) 2 Atk 50.

3 *R v Carrol* (1744) 1 Wils 75; *Re Macleod* (1842) 6 Jur 461; *Smith v Lakeman* (1856) 26 LJ Ch 305; *Re Mulock, ex p Chetwynd* (1864) 33 LJP & A 205; *R v Craddock* (1875) Times, 18 March; *Sharland v Sharland* (1885) 1 TLR 492; *Pavlova v Harvey* (1914) Times, 27 November. But contrast *Webster v Bakewell RDC* [1916] 1 Ch 300, in which a threat to exercise a legal right against the plaintiff to an action was held not to constitute a contempt even though it was calculated and intended to deter the party from proceeding with the action. See also *A-G v Times Newspapers Ltd* [1974] AC 273 at 319, [1973] 3 All ER 54 at 80, HL, per Lord Simon of Glaisdale; *R v Kellett* [1976] QB 372 at 390, [1975] 3 All ER 468 at 480-481, CA, per Stephenson LJ.

4 *Raymond v Honey* [1983] 1 AC 1, [1982] 1 All ER 756, HL.

5 *Re Hooley, Rucker's Case* (1898) 79 LT 306; but cf *Cox v Cox* (1893) Times, 18 July.

6 *Thomas v Gwynne* (1845) 8 Beav 312.

7 *Re P (Minors)* [1991] FCR 283, [1991] 1 FLR 280, CA.

8 *Cole v Hawkins* (1738) 2 Stra 1094 ('service of a process in the sight of the court' held to be contempt). It is not clear to what extent the principle applies to service of process within the precincts of the court: see *R v Jones, ex p McVittie* [1931] 1 KB 664 (service in the corridor of an assize court on a party who had deliberately evaded service held not to be a contempt); *R v Barnet County Council, ex p Brantschen* (1970) 115 Sol Jo 60 (service in precincts of court held not to be contempt and to constitute valid service).

9 *Williams v Lyons* (1723) 8 Mod Rep 189 (attempt to intimidate plaintiff to induce him to take less damages than he had been awarded); *Re Higg's Mortgage, Goddard v Higg* [1894] WN 73 (retaking possession of land granted to plaintiff under a foreclosure order). Cf *Smith v Smith* (1889) 59 LJP 15, where the molestation of a husband after a decree of judicial separation was held not to constitute a contempt, as the function of the court had ended with the decree. As, however, the court has subsequently held that it has power to grant an injunction even after it has granted a decree (see eg *Robinson v Robinson* [1965] P 39, [1963] 3 All ER 813), the validity of the decision in *Smith v Smith* supra is questionable. See also *A-G v Times Newspapers Ltd* [1974] AC 273 at 309, [1973] 3 All ER 54 at 73, HL, per Lord Diplock.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/437. Obstructing officers of the court in general.

437. Obstructing officers of the court in general.

Any act which prevents or is intended to prevent an officer of the court from carrying out his official duties is a contempt of court¹. Contempt by obstructing an officer of the court is punished not for the purpose of vindicating the dignity of the court or the person of the officer, but to prevent improper interference with the administration of justice².

Disturbing the proceedings before an officer of the court is a contempt of the court whose officer he is³, and so also is an attempt by threat or otherwise to induce an officer of the court to depart from the course of his duty⁴.

1 As to the wilful insulting of an officer of the court see also the Contempt of Court Act 1981 s 12(1)(a) (magistrates' court); the County Courts Act 1984 s 118 (as amended) (county court); and para 454 post. As to interference with a judge see para 434 ante.

2 *Helmore v Smith (No 2)* (1886) 35 ChD 449 at 455, CA; *Re Johnson* (1887) 20 QBD 68 at 73-75, CA. See also *Johnson v Grant* 1923 SC 789 at 790 per Lord Clyde; *R v Runtig* (1988) 89 Cr App Rep 243, [1989] Crim LR 282, CA.

3 See *Re Johnson* (1887) 20 QBD 68, CA. See also *French v French* (1824) 1 Hog 138, where the earlier authorities are discussed.

4 *R v Osbourne* (1992) Independent, 28 September, (1992) 14 Cr App Rep (S) 265, CA. See also paras 437 ante, 438-442 post.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/438. Process servers.

438. Process servers.

Obstructing a process server in the execution of his duty¹ is, generally speaking, a contempt of court², but slight obstruction or verbal abuse not actually preventing service of the process will not usually be so regarded³. In certain cases refusal to allow persons to be served with process may amount to contempt. Thus the governor of a prison is not in general justified in refusing access to a prisoner for the purpose of serving process upon him⁴.

1 Physical obstruction of an officer of the court, even amounting to an assault, may not constitute a contempt if the officer is acting in excess of his powers: cf *Southam v Smout* [1964] 1 QB 308, [1963] 3 All ER 104, CA; *Vaughan v McKenzie* [1969] 1 QB 557, [1968] 1 All ER 1154, DC. See generally SHERIFFS.

2 See eg *Dastoinis v Apprice* (1580) Cary 91 (imprisonment of server of subpoena); *Osborne v Tuthell* (1583) Ch Cas in Ch 168; *Giles v Lackington* (1584) Ch Cas in Ch 177 (assault on server of subpoena); *Anon* (1711) 1 Salk 84; *R v Jones* (1719) 1 Stra 185; *Van v Price* (1743) Dick 91; *R v Jermy* (1752) Say 47; *R v Kendrick* (1754) Say 114; *Williams v Johns* (1773) Dick 477, 1 Mer 303n (process server made to eat the subpoena); *Ex p Page* (1810) 17 Ves 59; *Elliot v Halmarack* (1816) 1 Mer 302; *Emery v Bowen* (1836) 5 LJ Ch 349; *Price v Hutchinson* (1870) LR 9 Eq 534 (forcible detention of process server); *Lewis v Owen* [1894] 1 QB 102, CA; *Re Barnes* [1968] 1 NSW 697.

3 *Giles v Venson* (1728) 1 Barn KB 56; *Adams v Hughes* (1819) 1 Brod & Bing 24; *Myers v Wills* (1820) 4 Moore CP 147; *Weeks v Whitely* (1835) 1 Har & W 218.

4 *Danson v Le Capelain and Steele* (1852) 7 Exch 667. The ordinary course is to apply to the Secretary of State in the first instance for permission for an interview with the prisoner for the purpose of effecting service. Cf *Raymond v Honey* [1983] 1 AC 1, [1982] 1 All ER 756, HL (denial by a prison governor of a prisoner's right of access to the court).

As to the refusal of access to a mental patient for the purpose of serving him with a writ see *Denison v Harding* (1867) 15 WR 346; but cf *Wylam v Wylam and Roller* (1893) 69 LT 500.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/439. Solicitors.

439. Solicitors.

The court will protect its officers while discharging their duties¹. Thus a solicitor who assaulted and intimidated the opposing solicitor while passing from the judge's chambers to the outer door of the courts was punished by committal for contempt². Acts of interference with the papers of solicitors when in court and appearing for a party in legal proceedings may also constitute a contempt of court³.

1 *R v Osbourne* (1992) Independent, 28 September, (1992) 14 Cr App Rep (S) 265, CA. See also para 437 ante. As to the wilful insulting of a solicitor see also the Contempt of Court Act 1981 s 12(1)(a) (magistrates' court); the County Courts Act 1984 s 118 (as amended) (county court); and para 454 post.

2 *Re Johnson* (1887) 20 QBD 68, CA; *Connolly v Dale* [1996] QB 120 at 125, [1996] 1 All ER 224 at 228, DC, per Balcombe LJ. See also *R v Runtig* (1988) 89 Cr App Rep 243, [1989] Crim LR 282, CA. But cf *Clements and Costa Rica Republic v Erlanger* (1877) 46 LJ Ch 375, CA, in which a minor assault on, and verbal abuse of, a visiting solicitor who was seeking to recover a document from another solicitor's office was held not to constitute a contempt.

3 See *Re Griffin (Paul)* (1996) Times, 6 November.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/440. Counsel.

440. Counsel.

The protection afforded to officers of the court while discharging their duties extends also to counsel¹. Acts of interference with the papers of counsel when in court and appearing for a party in legal proceedings may constitute a contempt of court².

1 See para 437 ante. As to the wilful insulting of counsel see also the Contempt of Court Act 1981 s 12(1)(a) (magistrates' court); and para 454 post.

2 See *Re Griffin (Paul)* (1996) Times, 6 November.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/441. Receivers, liquidators, sequestrators.

441. Receivers, liquidators, sequestrators.

A receiver appointed by the court is an officer of the court, and to interfere with him or disturb him in his capacity as such is a contempt¹. The fact that the order appointing the receiver was improperly procured is no justification for interfering with him, since the validity of the order can be challenged by application to the court².

A liquidator in the winding up of a company by the court is in the same position as a receiver appointed by the court, and it is a contempt to interfere in any way with his possession of the assets without the leave of the court³. Similarly it is a contempt to interfere with the possessions of sequestrators⁴.

1 *Ames v Birkenhead Docks Trustees* (1855) 20 Beav 332; *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104; *Helmshore v Smith (No 2)* (1886) 35 ChD 449, CA; *Broad v Wickham* (1831) 4 Sim 511; *Re Mead, ex p Cochrane* (1875) LR 20 Eq 282 (ousting receiver from possession of property over which he is appointed); *Searle v Choat* (1884) 25 ChD 723, CA (bringing proceedings against a receiver without permission of the court); *Hawkins v Gathercole* (1852) 1 Drew 12 (issuing sequestration against the receiver). See also paras 437 ante, 454 post. As to receivers generally see RECEIVERS.

2 *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104. Liquidators and receivers not appointed by the court are probably not protected by the principle since they are not officers of the court: see *Re Hill's Waterfall Estate and Gold Mining Co* [1896] 1 Ch 947 at 954.

3 *Re Henry Pound, Son and Hutchins* (1889) 42 Ch D 402, CA; *Re Joshua Stubbs Ltd, Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475, CA. See also vol 7(3) (2004 Reissue) para 574.

4 *Lord Pelham v Duchess of Newcastle* (1713) 3 Swan 289n; *Angel v Smith* (1804) 9 Ves 335.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(vii) Interference with Persons having Duties to discharge in Court/442. Sheriffs, bailiffs, Admiralty marshal.

442. Sheriffs, bailiffs, Admiralty marshal.

It is a contempt to obstruct or impede a sheriff or bailiff in the execution of his duty¹. Similarly it is a contempt for a person to retake possession of goods seized by the sheriff or bailiff pursuant to a writ of execution or of land delivered to the sheriff or bailiff in execution of a writ of possession².

It is also a contempt to interfere with a ship in the custody of the Admiralty marshal³ by moving the ship⁴, by removing the arrest documents from the ship⁵, or by forcibly preventing the master from going on board⁶, or, where an order has been made that the ship be sold by the Admiralty marshal, by attempting independently and concurrently to sell the ship⁷.

1 See eg *Lewis v Owen* [1894] 1 QB 102, CA; *R v Edwards, ex p Welsh Church Temporalities Comrs* (1933) 49 TLR 383, DC; but see para 438 note 1 ante. A sheriff may arrest and commit to prison any person who resists the execution of a writ: see the Sheriffs Act 1887 s 8(2); and SHERIFFS. See also paras 437 ante, 454 post.

2 *Lacon v De Groat* (1893) 10 TLR 24; *Re Higg's Mortgage, Goddard v Higg* [1894] WN 73; *Cooper v Asprey* (1863) 32 LJB 209; *Alliance Building Society v Austen* [1951] 2 All ER 1068. The remedy of committal for contempt will only be exercised in extreme cases, the usual remedy being an application for writ of restitution: see *Alliance Building Society v Austen* supra.

3 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 164.

4 *The Jarlinn* [1965] 3 All ER 36, [1965] 1 WLR 1098.

5 *The Jarvis Brake* [1976] 2 All ER 886, [1976] 2 Lloyd's Rep 320.

6 *The Abodi Mendi* [1939] P 178, sub nom *Spanish Republican Government v Abodi Mendi* [1939] 1 All ER 701, CA.

7 *The Jarvis Brake* [1976] 2 All ER 886, [1976] 2 Lloyd's Rep 320.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(viii) Interference with Persons over whom the Court exercises Special Jurisdiction/443. Wards of court.

(viii) Interference with Persons over whom the Court exercises Special Jurisdiction

443. Wards of court.

A ward of court is subject to the care and control of the court and no important step in the child's life can be taken without the court's consent¹. It is therefore a contempt of court to interfere with a ward of court, for example by marrying the ward² or by taking the ward out of the jurisdiction without the consent of the court³. As a matter of policy, it is desirable that such interferences be dealt with, other than in exceptional circumstances, as a contempt of court rather than as the subject matter of a criminal prosecution⁴.

It is probable that any improper interference with a minor in respect of whom a guardianship order has been made also constitutes a contempt of court⁵.

1 See *Re S (infants)* [1967] 1 All ER 202 at 209, [1967] 1 WLR 396 at 407 per Cross J. As to wards of court generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 218 et seq. As to reporting restrictions applicable to proceedings relating to minors see para 431 head (a) ante. See also para 430 head (4) ante.

2 See *Herbert's Case* (1731) 3 P Wms 116; *Cox v Bennett* (1874) 31 LT 83; *Re H's Settlement, H v H* [1909] 2 Ch 260 at 264 per Warrington J; *Re Crump (an infant)* (1963) 107 Sol Jo 682 (marriage in defiance of express orders of court). Ignorance of the fact that the child is a ward of court is no defence although it may be relevant to the issue of punishment: *Re H's Settlement, H v H* supra. Any party involved in the marriage of the ward (including the ward) may be committed for contempt: *Re Leigh, Leigh v Leigh* (1888) 40 ChD 290, CA; *Re Crump (an infant)* supra. See also *Eyre v Countess of Shaftesbury* (1725) 2 P Wms 102.

3 *Wellesley v Duke of Beaufort, Long Wellesley's Case* (1831) 2 Russ & M 639; *Symonds v Symonds and Harrison* (1872) LR 2 P & D 447; *Re E (an infant)* [1956] Ch 23, [1955] 3 All ER 174. See also *Re Harris (an infant)* (1960) Times, 21 May; *R v D* [1984] AC 778, [1984] 2 All ER 449, HL (parent snatching child). As to child abduction generally see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 780 et seq.

The Secretary of State for the Home Department is entitled to exercise his powers of removal and deportation of a person (ie under the Immigration Act 1971: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 160 et seq) in respect of a ward or of a person the subject of an application relating to wardship or residence under the Children Act 1989 without the consent of the court, and the exercise of those powers does not constitute a contempt of court: *Teame v Aberash* (1994) Times, 8 April, CA. Nor is it a contempt to order the removal, during or after the application, of the person with whom the child has been ordered to reside: *Teame v Aberash* supra. As to the Secretary of State for the Home Department see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 466 et seq. As to residence orders under the Children Act 1989 see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 262.

Other examples of wrongful interference with a ward are: refusing to deliver a ward to the guardian appointed by the court (*Burton v Earl of Darnley* (1869) LR 8 Eq 576n); failing to comply with order as to custody (*G-- v L--* [1891] 3 Ch 126); examination of ward by psychiatrist without consent of court (*Re S (infants)* [1967] 1 All ER 202, [1967] 1 WLR 396); and, perhaps, questioning or interviewing a ward of court (see *Re T (Ajj) (an infant)* [1970] Ch 688 at 689, [1970] 2 All ER 865 at 867, CA, per Russell LJ).

4 *R v D* [1984] AC 778, [1984] 2 All ER 449, HL (removal by a parent of a child from the jurisdiction in defiance of a court order should generally be dealt with as a contempt of court rather than as the subject matter of a criminal prosecution for kidnapping; however, the exceptional circumstances of this case were held to justify the prosecution of the parent for kidnapping the child).

5 As to the appointment of guardians by the court see the Children Act 1989 s 5; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 144 et seq.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(viii) Interference with Persons over whom the Court exercises Special Jurisdiction/444. Persons suffering from mental disorder.

444. Persons suffering from mental disorder.

The property of a person suffering from mental disorder¹ is protected and administered by the Court of Protection²; and any act or omission in the course of proceedings in the Court of Protection which, if occurring in the course of proceedings in the High Court, would have been a contempt of the court is punishable as a contempt³.

Certain specific acts in relation to persons suffering from mental disorders are punishable offences⁴ but it is unclear to what extent interference with the welfare of such persons, other than by one of the acts specified, constitutes a contempt of court⁵.

1 For the meaning of 'mental disorder' see the Mental Health Act 1983 s 1; and MENTAL HEALTH vol 30(2) (Reissue) para 402.

2 See *ibid* Pt VII (ss 93-113) (as amended); and MENTAL HEALTH vol 30(2) (Reissue) para 671 et seq.

3 See *ibid* s 104(2), (3); and MENTAL HEALTH vol 30(2) (Reissue) para 738.

4 See *ibid* Pt IX (ss 126-130) (as amended); and MENTAL HEALTH vol 30(2) (Reissue) para 765 et seq. See also the Sexual Offences Act 1956 ss 7, 9 (s 7 as substituted).

5 Prior to the enactment of the Mental Health Act 1959 (repealed: see now the Mental Health Act 1983; and MENTAL HEALTH), persons of unsound mind were in a position similar to that of wards of court (see para 443 ante); and any improper interference with their welfare was punishable as a contempt by the High Court. Thus it was a contempt to marry a person of unsound mind so found by inquisition (*Ash's Case* (1702) Prec Ch 203), or to fail to produce a person alleged to be of unsound mind pursuant to an order of the court (*Lord Wenman's Case* (1721) 1 P Wms 701). See also *Re B-- (an alleged Lunatic)* [1892] 1 Ch 459, CA.

UPDATE

444-445 Persons suffering from mental disorder, Abuse of process in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

444 Persons suffering from mental disorder

NOTE 4--Sexual Offences Act 1956 ss 7, 9 repealed: Sexual Offences Act 2003 Sch 6 para 11(a), Sch 7. As to continuity of sexual offences law see Violent Crime Reduction Act 2006 s 55.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(ix) Abuse of Process of the Court/445. Abuse of process in general.

(ix) Abuse of Process of the Court

445. Abuse of process in general.

The court has power to punish as contempt any misuse of the court's process. Thus the forging or altering of court documents and other deceits of like kind are punishable as serious contempts¹. Similarly, deceiving the court or the court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt².

Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive³. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave⁴. Where the court, by exercising its statutory powers, its powers under rules of court or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularity or misuse of process amounts to an interference with the course of justice, extending its influence beyond the parties to the action, it may be punished as a contempt⁵.

1 2 Hawk PC (8th Edn) c 22 s 43; *Dag v Penkevell* (1605) Moore KB 770 pl 1064 (sub nom *Doydige v Penkevell* Noy 101) (altering or adding name on a warrant); *Hale v Castleman* (1746) 1 Wm Bl 2; *Fawcett v Garford* (1789) cited in Oswald on Contempt (3rd Edn) pp 62, 82 (forging signature of counsel); *Finnerty v Smith* (1835) 1 Bing NC 649 (altering date of jurat on affidavit); *Re Jacobs* (1874) Times, 13 June (erasing court order from back of summons; see also 18 Sol Jo 642). Cf *Re Taylor* [1912] AC 347, PC (altering names of witnesses in subpoena, without any intent to defraud, held not to be a punishable contempt). As to the defacing etc of documents see the Theft Act 1968 s 20; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 317.

2 See eg *Linwood v Andrews and Moore* (1888) 58 LT 612 (barrister wilfully deceiving the court in the conduct of a case, by procuring a party to make an affidavit he knew to be untrue and reading the affidavit to the court); *Apted v Apted and Bliss* [1930] P 246 (false statement when asking for the exercise of the court's discretion in divorce; and see also the cases cited at 263); *R v Weisz, ex p Hector Macdonald Ltd* [1951] 2 KB 611, [1951] 2 All ER 408, DC (fictitious indorsement of writ).

3 Examples of cases where the court formerly punished such abuse of process as a contempt are cited in Oswald on Contempt (3rd Edn) p 61. See particularly *Milward v Welden* (1565) Toth 101, where a litigant was fined and committed for prolixity of pleading. See also *Whitlock v Marriot* (1686) Dick 16; *Bishop v Willis* (1749) 5 Beav 83n.

4 See RSC Ord 18 r 19. The court may also strike out pleadings or stay proceedings under its inherent jurisdiction: see *Reichel v Magrath* (1889) 14 App Cas 665, HL; and CIVIL PROCEDURE. As to vexatious litigants see also the Supreme Court Act 1981 s 42 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARAS 244, 258.

The court also has power to set aside a subpoena which has been issued in abuse of the process of the court: see eg *Farulli v Farulli and Pederzoli* [1917] P 28.

See generally CIVIL PROCEDURE.

5 *Apted v Apted and Bliss* [1930] P 246 at 262-265 per Lord Merrivale P. Thus, for example, the following acts of abuse of process have been held to be punishable as contempts: fraudulent collusion between plaintiff and defendant to defeat the rights of a third party (*M'Gregor v Barrett* (1848) 6 CB 262); unlawfully depriving a court of jurisdiction over an action (*Re Septimus Parsonage & Co* [1901] 2 Ch 424); obtaining payment of money as the consideration for the withdrawal of a motion to commit for contempt (*R v Newton* (1903) 67 JP 453).

UPDATE

444-445 Persons suffering from mental disorder, Abuse of process in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

445 Abuse of process in general

TEXT AND NOTE 4--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(x) Breach of Duty by Persons officially connected with Court or Proceedings/446. In general.

(x) Breach of Duty by Persons officially connected with Court or Proceedings

446. In general.

Contempt of court may be committed not only by interfering with persons officially connected with the court or proceedings but also by those persons themselves in carrying out their official duties¹.

¹ See paras 447-452 post.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(x) Breach of Duty by Persons officially connected with Court or Proceedings/447. Solicitors.

447. Solicitors.

Solicitors, as officers of the court¹, are subject to a special jurisdiction² and are liable to punishment for any kind of contempt³.

A solicitor may be committed for contempt for breach of his undertakings, even if they were not given directly to the court⁴. Similarly a solicitor may be held guilty of contempt for failing to obey an order of the court⁵ or for wrongfully withholding funds belonging to a client⁶.

No solicitor may commence, prosecute or defend any action or any matter in bankruptcy, while he is a prisoner in any prison; and, if he acts in contravention of this provision, he (and any other solicitor in whose name he is permitted to act) is guilty of contempt of the court in which the action or matter is commenced, prosecuted or defended, and may be punished accordingly⁷.

An unqualified person purporting to act as a solicitor is guilty of an offence and liable on conviction on indictment to imprisonment for not more than two years or to a fine or to both; and is also guilty of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken, and may be punished accordingly⁸. Such a person is guilty of contempt whether or not he so acts with the authority of a qualified solicitor⁹ and whether he acts in his own name or in the name of another¹⁰.

¹ See the Solicitors Act 1974 s 50 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARA 745.

² See LEGAL PROFESSIONS vol 65 (2008) PARA 745. For an instance of a purported exercise of the special jurisdiction subsequently held on appeal to have been an exercise of the jurisdiction to punish a solicitor for contempt of court see *Weston v Central Criminal Court Courts Administrator* [1977] QB 32, [1976] 2 All ER 875, CA.

3 2 Hawk PC (8th Edn) c 22 ss 6-12; *Bishop v Willis* (1749) 5 Beav 83n. For examples of contempt by a solicitor see *Daw v Eley* (1868) LR 7 Eq 49 (letter by a solicitor to a newspaper discussing the merits of pending proceedings in which he was engaged); *Re A Solicitor* [1915] 1 IR 152 (solicitor destroying documents on which a charge of misconduct, before a committee of the Law Society, was based). See also LEGAL PROFESSIONS vol 65 (2008) PARAS 747-748.

The jurisdiction to strike out proceedings as an abuse of process on the grounds of prejudice resulting from inordinate and inexcusable delay may be exercised in respect of proceedings brought under the special jurisdiction: *Taylor v Ribby Hall Leisure Ltd* [1997] 4 All ER 760, [1998] 1 WLR 400, CA.

4 See para 483 post; and LEGAL PROFESSIONS vol 65 (2008) PARA 748 et seq. As to breach of undertakings generally see para 482 post.

5 Cf *Izuora v R* [1953] AC 327, [1953] 1 All ER 827, PC; *Weston v Central Criminal Court Courts Administrator* [1977] QB 32, [1976] 2 All ER 875, CA. See also *Alliance and Leicester Building Society v Ghahremani* [1992] NLJR 313, (1992) Times, 19 March. As to disobedience to an order of the court as civil contempt see para 458 post.

6 See eg *Re Grey* [1892] 2 QB 440, CA.

7 See the Solicitors Act 1974 s 40. A solicitor acting in contravention of this provision cannot maintain an action for the recovery of any costs in respect of any business so done by him: see s 40. See also LEGAL PROFESSIONS vol 65 (2008) PARA 731.

8 See *ibid* s 20 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARA 589.

9 *Abercrombie v Jordan* (1881) 8 QBD 187, CA.

10 *Re Simmons* (1885) 15 QBD 348.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(x) Breach of Duty by Persons officially connected with Court or Proceedings/448. Receivers and sequestrators.

448. Receivers and sequestrators.

A receiver who fails to perform his duties, for example by failing to pay money due from him as receiver, is guilty of contempt¹.

Similarly a sequestrator may be guilty of contempt if he abuses his powers².

1 *Re Gent, Gent-Davis v Harris* (1888) 40 ChD 190; *Re Bell's Estate, Foster v Bell* (1870) LR 9 Eq 172. See also *Re Grantham Wholesale Fruit, Vegetable and Potato Merchants Ltd* [1972] 1 WLR 559 (failure by liquidator to obey court order requiring compliance with statutory duties); *Re S & A Conversions Ltd* (1988) 4 BCC 384, [1988] NLJR 169, CA.

2 *Lord Pelham v Lord Harley* (1713) 3 Swan 291n. See also *Sykes v Dyson* (1870) LR 9 Eq 228. As to sequestration see paras 465, 492, 495, 507 post.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(x) Breach of Duty by Persons officially connected with Court or Proceedings/449. Sheriffs and bailiffs.

449. Sheriffs and bailiffs.

A sheriff, under-sheriff, bailiff or sheriff's officer who is guilty of certain offences in the execution of his office, in addition to other penalties, is punishable by a superior court of record as for contempt¹.

Any person purporting to act as an under-sheriff, bailiff or sheriff's officer when not entitled so to do is guilty of contempt of the High Court and is liable to punishment as if he were an under-sheriff guilty of such an offence².

1 See the Sheriffs Act 1887 s 29 (as amended); and SHERIFFS. For an instance of a sheriff being fined for contempt of a superior court of record see *Re Sheriff of Surrey* (1860) 2 F & F 234 at 236.

2 See the Sheriffs Act 1887 s 29(6) (as amended); and SHERIFFS.

UPDATE

449 Sheriffs and bailiffs

TEXT AND NOTES--Sheriffs Act 1887 s 29 further amended: Courts Act 2003 Sch 8 para 62.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(x) Breach of Duty by Persons officially connected with Court or Proceedings/450. Counsel.

450. Counsel.

In as much as counsel, though not officers of the court, have a special privilege to practise the law, their conduct in an action may be subject to review by the court as contempt¹.

1 2 Hawk PC (8th Edn) c 22 s 30. See also para 407 head (8) ante; and LEGAL PROFESSIONS vol 66 (2009) PARA 1249. The following are instances in which counsel have been punished or censured: for insulting a juryman (*Ex p Pater* (1864) 5 B & S 299); for addressing a letter to the chief justice of a colony reflecting on the judges (*Re Wallace* (1866) LR 1 PC 283); and for wilfully deceiving the court (*Linwood v Andrews and Moore* (1888) 58 LT 612; *Meek v Fleming* [1961] 2 QB 366 at 379, [1961] 3 All ER 148 at 154, CA, per Holroyd Pearce LJ).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(x) Breach of Duty by Persons officially connected with Court or Proceedings/451. Jurors.

451. Jurors.

A juror who does not attend the court in answer to a jury summons, or who is not available when called on to serve as a juror, or is unfit for service by reason of drink or drugs, may be guilty of contempt of court¹.

Contempt of court may also be committed if a juror refuses to be sworn or to give any verdict at all², leaves the court without permission³ or is guilty of misbehaviour while in court⁴.

It is a contempt for a juror to disclose any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in

any legal proceedings⁵; or to discuss the case in which he is involved with a member of the public during the hearing and before the verdict⁶; or to attempt improperly to influence a fellow juror⁷.

1 See the Juries Act 1974 s 20 (as amended); and JURES vol 61 (2010) PARA 818. A person who fails to attend when duly summoned or is not available when called on to serve as a juror or is unfit for service by reason of drink or drugs is liable to a fine not exceeding level 3 on the standard scale: see s 20(1) (as amended). Such an offence is punishable either on summary conviction or as if it were criminal contempt of court committed in the face of the court: s 20(2). A person is not to be liable to punishment if he can show some reasonable cause for his failure to comply with the jury summons or for not being available when called upon to serve: see s 20(4) (as amended). As to the procedure for summoning jurors to the High Court, Crown Court and county court, and the penalties for non-attendance, see JURES vol 61 (2010) PARA 812 et seq. As to the standard scale see para 407 note 8 ante.

2 2 Hawk PC (8th Edn) c 22 s 15. See also *R v Schot* [1997] 2 Cr App Rep 383, (1997) Times, 14 May, CA. It has also been held to be a contempt for jurors to determine their verdict by 'hustling halfpence in a hat': see *Langdell v Sutton* (1737) Barnes 32; 2 Hawk PC (8th Edn) c 22 ss 15-17.

3 See eg *R v Rhoder* (1894) Times, 12 February (where a juryman was seized with sickness and rushed out of court).

4 See eg *Welcden v Elkington* (1578) 2 Plowd 516 at 518 (juror had sweetmeats in court). As to contempt in face of court by a juror see also para 407 head (7) ante.

5 See the Contempt of Court Act 1981 s 8(1); and para 434 ante.

6 *R v Macrae* (1892) Times, 19 November. See also *Ellis v Deheer* [1922] 2 KB 113 at 118, CA (juror publishing his account of a trial may be in contempt); *R v Dyson* (1971) 5 CCC (2d) 401 (inherent power in court to punish juror for disclosure after jury discharged); *R v Papineau* (1980) 58 CCC (2d) 72 (questioning juror about jury's discussions which took place before juror was discharged was contempt of court).

7 *Re MM and HM* [1933] IR 299, CA. A juror so acting may commit the common law offence of embracery: see para 434 note 3 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 729.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(x) Breach of Duty by Persons officially connected with Court or Proceedings/452. Judges of inferior courts.

452. Judges of inferior courts.

Judges of inferior courts are punishable by committal for acting unjustly, oppressively or irregularly in the execution of their duty, or for disobeying writs issued by the High Court requiring them to proceed or not to proceed in matters before them¹, but a great part of this jurisdiction is virtually superseded by statutes giving the Lord Chancellor power to remove a judge of an inferior court for incapacity, inability or misbehaviour².

1 2 Hawk PC (8th Edn) c 22 ss 25-29; 4 BI Com 281; *R v Davies* [1906] 1 KB 32 at 42-44 per Wills J. In *Mungean v Wheatley* (1851) 6 Exch 88, a writ of attachment issued against a county court judge for trying an action after a writ of certiorari had issued, but, the contempt not being wilful, the attachment was to lie in the office for a month to enable the judge to comply with a second certiorari.

2 See eg the Courts Act 1971 s 17(4); the County Courts Act 1984 s 11(4), (5), (6); and the Coroners Act 1988 s 3(4). See also CORONERS vol 9(2) (2006 Reissue) para 926; COURTS.

UPDATE

452 Judges of inferior courts

NOTE 2--Courts Act 1971 s 17(4) amended: Constitutional Reform Act 2005 Sch 4 para 68. County Courts Act 1984 s 11(5), (6) amended: 2005 Act Sch 4 para 164. Coroners Act 1988 s 3(4) substituted: 2005 Act Sch 4 para 194.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(3) CONTEMPTS COMMITTED OUTSIDE THE COURT/(xi) Interference with the Court's Documents/453. Interference with the court's documents.

(xi) Interference with the Court's Documents

453. Interference with the court's documents.

A person who is not a party to proceedings before the court and who obtains information from documents in the custody of the court with knowledge that leave is required and has not been obtained is guilty of contempt of court¹.

¹ *Dobson v Hastings* [1992] Ch 394 at 404, [1992] 2 All ER 94 at 102 per Sir Donald Nicholls V-C (knowingly interfering with the court's documents is as much an interference with justice as knowingly interfering with the court's officers).

UPDATE

453 Interference with the court's documents

TEXT AND NOTE--Draft judgments are released to the parties subject to a condition that they will be kept confidential, and any breach of that confidentiality will be a contempt of court: *Baigent v Random House; Re The Lawyer* [2006] All ER (D) 26 (May).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(4) CONTEMPT OF INFERIOR COURTS AND TRIBUNALS/454. Contempt of inferior courts.

(4) CONTEMPT OF INFERIOR COURTS AND TRIBUNALS

454. Contempt of inferior courts.

The Queen's Bench Division watches over the proceedings of inferior courts¹ not only to prevent them from exceeding their jurisdiction or otherwise acting contrary to the law but also to prevent persons from interfering with the course of justice in such courts².

Thus the Queen's Bench Division will punish as contempt acts amounting to an interference with the course of justice in connection with committal proceedings before magistrates³. The court will also punish acts of contempt committed in the face of a magistrates' court, although this jurisdiction is largely superseded by the statutory power of magistrates' courts to deal with any person who wilfully (1) insults the justice or justices, any witness before or officer of the

court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or (2) interrupts the proceedings of the court or otherwise misbehaves in court⁴. The county court has a similar statutory power⁵.

1 The jurisdiction of the Divisional Court of the Queen's Bench Division in respect of contempt of inferior courts within the meaning of RSC Ord 52 r 1 extends to courts-martial (*R v Daily Mail, ex p Farnsworth* [1921] 2 KB 733; *R v Gunn, ex p A-G* [1954] Crim LR 53, DC), consistory courts (*R v Daily Herald, ex p Bishop of Norwich* [1932] 2 KB 402), coroner's courts (*R v Surrey Coroner, ex p Campbell* [1982] QB 661 at 674-675, [1982] 2 All ER 545 at 553-554, DC, per Watkins LJ; *R v West Yorkshire Coroner, ex p Smith (No 2)* [1985] QB 1096, [1985] 1 All ER 100, DC), and industrial tribunals (*Peach Grey & Co (a firm) v Sommers* [1995] ICR 549, [1995] 2 All ER 513, DC). It is unclear whether it extends to solicitors' disciplinary tribunals (considered but not decided in *Peach Grey & Co (a firm) v Sommers* supra). As to courts-martial see para 457 post; and ARMED FORCES. As to coroner's courts see CORONERS vol 9(2) (2006 Reissue) para 904. As to industrial tribunals see EMPLOYMENT vol 41 (2009) PARA 1363 et seq; and as to solicitors' disciplinary tribunals see LEGAL PROFESSIONS vol 65 (2008) PARA 629 et seq.

Note that, for the purposes of the Contempt of Court Act 1981, 'court' is defined as including any tribunal or body exercising the judicial power of the state: see s 19; and para 410 note 1 ante.

Mental health tribunals have been held to be courts for the purposes of s 19: see *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370, [1991] 1 All ER 622, HL. However, the professional conduct committee of the General Medical Council has been held not to be a court within the meaning of the Contempt of Court Act 1981 s 19: *General Medical Council v British Broadcasting Corp* (10 June 1998, unreported), CA.

It has also been held that a local valuation court did not constitute an inferior court: *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL (the law of contempt of court protects only courts of law forming part of the judicial, as opposed to the administrative, system of the country). In this case it was said that public policy requires that most of the principles relating to contempt of court which have for ages applied to the long-established inferior courts (such as county courts, magistrates' courts, courts-martial, coroners' courts and consistory courts) should not apply to valuation courts and other modern tribunals which may be regarded as inferior courts: see *A-G v British Broadcasting Corp* supra at 342 and 169 per Lord Salmon. See also *Badry v DPP of Mauritius* [1983] 2 AC 297, [1982] 3 All ER 973, CA.

As to tribunals see paras 455-456 post.

2 2 Hawk PC (8th Edn) c 3 ss 3, 4, c 22 s 2; 4 Bl Com 262; and see *R v Parke* [1903] 2 KB 432 at 442 per Wills J; *R v Davies* [1906] 1 KB 32 at 42 per Wills J; *R v Clarke, ex p Crippen* (1910) 103 LT 636 (where the prisoner was in custody under a warrant, but had not been brought before a magistrate); *R v Daily Mirror, ex p Smith* [1927] 1 KB 845; *R v Evening Standard, ex p DPP* (1924) 40 TLR 833, DC; *R v Edwards, ex p Welsh Church Temporalities Comrs* (1933) 49 TLR 383, DC (obstruction of sale of distrained goods). See also RSC Ord 52 r 1(2) (a)(iii).

3 See eg *A-G v Leveller Magazine Ltd* [1979] AC 440, [1979] 1 All ER 745, HL. See also *R v Tamworth Justices, ex p Walsh* (1994) Times, 3 March, DC, where a writ of certiorari was granted to quash a magistrates' order that a solicitor be taken into custody under the Contempt of Court Act 1981 s 12(2) (as amended: see note 4 infra).

In any proceedings for contempt where a person is liable to be committed or fined by any superior court (including the High Court) for contempt in the face of that or any other court, the court may order that he be granted representation for the purposes of the proceedings if it appears to the court to be desirable to do so in the interests of justice: see the Legal Aid Act 1988 s 29.

As to procedure on application to the Queen's Bench Division see para 496 post.

4 See the Contempt of Court Act 1981 s 12(1). This jurisdiction of the magistrates' court to punish contempts is limited to contempts committed in the face of the court or closely related to events occurring in or around the court: see *R v Bloomsbury County Court, ex p Brady* (1987) Times, 16 December, CA. See also *R v Newbury Justices, ex p Pont* (1983) 78 Cr App Rep 255, sub nom *R v Newbury Justices, ex p du Pont* [1984] Crim LR 230, DC (spectators blocking exit doors to prevent police from removing defendant from court in accordance with order of magistrates); *Bodden v Metropolitan Police Comr* [1990] 2 QB 397, [1989] 3 All ER 833, CA (interruption of proceedings in magistrates' court by use of loudhailer outside court building).

The court may order any officer of the court, or any constable, to take the offender into custody and detain him until the rising of the court; and the court may, if it thinks fit, commit the offender to custody for a specified period not exceeding one month or impose on him a fine not exceeding £2,500, or both: s 12(2) (amended by the Criminal Justice Act 1991 s 17(3)(a), Sch 4 Pt I). A fine imposed under this provision is to be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: Contempt of Court Act 1981 s 12(2A) (added by the Criminal Justice Act 1991 s 17(3)(e), Sch 4 Pt V para 3; substituted by the Criminal Justice Act 1993 s 65(3), Sch 3 para 6(4)). A magistrates' court has no power to commit to prison for contempt a

person under the age of 17 years; and has power to commit a person over the age of 17 and under the age of 21 years only if it is of the opinion that no other method of dealing with him is appropriate: see the Criminal Justice Act 1982 ss 1, 9(1) (both as amended). See also *R v Selby Justices, ex p Frame* [1992] QB 72 at 80-81, [1991] 2 All ER 344 at 350-351, DC, per Otton J. A magistrates' court may at any time revoke an order of committal made under the Contempt of Court Act 1981 s 12(2) (as amended) and, if the offender is in custody, order his discharge: s 12(4).

Provisions as to restriction on fines in respect of young persons, enforcement, appeal to the Crown Court, overnight detention in default of payment and power to rectify mistakes (see the Magistrates' Courts Act 1980 s 36 (as amended), ss 75-78 (as variously amended), s 79, ss 80-82 (as variously amended), s 83, ss 84-91 (as variously amended), s 108 (as amended), s 136 (as amended), s 142(1) (as amended); and MAGISTRATES) apply in relation to an order under the Contempt of Court Act 1981 s 12 (as amended) as they apply in relation to a sentence on conviction or finding of guilty of an offence: see s 12(5).

In any proceedings for contempt where a person is liable to be committed or fined by a magistrates' court under s 12 (as amended), the court may order that he be granted representation for the purposes of the proceedings if it appears to the court to be desirable to do so in the interests of justice: see the Legal Aid Act 1988 s 29.

The magistrates' court also has power to commit to custody or fine a person refusing without just excuse to be sworn, give evidence or produce any document or thing: see the Magistrates' Courts Act 1980 s 97(4) (as amended); and MAGISTRATES.

5 See the County Courts Act 1984 s 118 (as amended); and COURTS. The county court has power to punish any person who wilfully (1) insults the judge of a county court, or any juror or witness, or any officer of the court during his sitting or attendance in court, or in going to or return from the court; or (2) interrupts the proceedings of a county court or otherwise misbehaves in court: see s 118(1) (as amended); and COURTS. An offender may, by order of the judge, be taken into custody and detained until the rising of the court; and the judge may, if he thinks fit, make an order committing the offender to prison for a specified period not exceeding one month, or impose upon the offender, for every offence, a fine of an amount not exceeding £2,500, or may both make such an order and impose such a fine: see s 118(1) (as amended); and COURTS. The jurisdiction of a county court to punish contempts under this provision is limited to contempts committed in the face of the court or closely related to events occurring in and about the court: see *Bush v Green* [1985] 3 All ER 721, [1985] 1 WLR 1143, CA. The County Courts Act 1984 s 118 (as amended) applies not only to proceedings in open court but also to arbitration proceedings before a district judge in chambers: *Bokhari v Blessed* (1995) Independent, 16 January.

In any proceedings for contempt where a person is liable to be committed or fined by a county court under the County Courts Act 1984 s 14 (as amended) (assaulting an officer of the court), s 92 (as amended) (rescuing goods seized in execution) or s 118 (as amended), the court may order that he be granted representation for the purposes of the proceedings if it appears to the court to be desirable to do so in the interests of justice: see the Legal Aid Act 1988 s 29. See also COURTS.

UPDATE

454 Contempt of inferior courts

NOTES 1, 2--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

NOTE 3--Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

NOTE 4--As to the procedure applicable to the exercise of a magistrates' court's jurisdiction under the Contempt of Court Act 1981 s 12 and the Magistrates' Courts Act 1980 s 97(4) see *Practice Note* [2001] 3 All ER 94. Criminal Justice Act 1982 ss 1, 9(1) repealed. Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2. See *Haw v City of Westminster Magistrates' Court* [2007] EWHC 2960 (Admin), [2008] 2 All ER 326, DC.

NOTE 5--*Bush v Green*, cited, distinguished: *Manchester CC v McCann* [1999] 2 WLR 590, CA (the contempt need not be committed in the face of the court; 'insults' includes 'threatens'). Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(4) CONTEMPT OF INFERIOR COURTS AND TRIBUNALS/455. Tribunals under the Tribunals of Inquiry (Evidence) Act 1921.

455. Tribunals under the Tribunals of Inquiry (Evidence) Act 1921.

The Tribunals of Inquiry (Evidence) Act 1921¹ contains express provisions relating to contempt of tribunals to which the Act applies². If any person (1) on being duly summoned as a witness before a tribunal makes default in attending; or (2) being in attendance as a witness refuses to take an oath legally required by the tribunal to be taken, or to produce any document in his power or control legally required by the tribunal to be produced by him, or to answer any question to which the tribunal may legally require an answer³; or (3) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court, then the chairman of the tribunal may certify the offence to the High Court; and the court may punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court⁴.

Further, the provisions of the Contempt of Court Act 1981⁵ apply in relation to any tribunal to which the Tribunals of Inquiry (Evidence) Act 1921 applies, and the proceedings of such a tribunal, as they apply in relation to courts and legal proceedings⁶.

1 See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 959-961.

2 See the Tribunals of Inquiry (Evidence) Act 1921 s 1(2); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 960. As to tribunals to which the Act applies see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) paras 13, 35; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 959-961. As to the application of the law of contempt to tribunals appointed under the 1921 Act see *Report of the Interdepartmental Committee on the Law of Contempt as it affects Tribunals of Inquiry* (Cmd 4078) (1969). See also the text and note 6 infra.

3 See *A-G v Mulholland* [1963] 2 QB 477, [1963] 1 All ER 767, CA; *A-G v Clough* [1963] 1 QB 773, [1963] 1 All ER 420.

4 See the Tribunals of Inquiry (Evidence) Act 1921 s 1(2); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 960.

A tribunal has no power itself to punish an offender, but if the chairman of the tribunal certifies the offence to the High Court, the court may inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged and after hearing any statement that may be offered in defence, the court may punish or take steps for the punishment of the offender in like manner as if he had been guilty of contempt of the court: see s 1(2). The certificate of the chairman of the tribunal is not binding on the court, and the court must itself inquire into the matter afresh to determine if an offence has been committed: *A-G v Mulholland* [1963] 2 QB 477 at 487, [1963] 1 All ER 767 at 769, CA, per Lord Denning MR; *A-G v Clough* [1963] 1 QB 773 at 785, [1963] 1 All ER 420 at 423 per Lord Parker CJ. However, a court will hesitate to refuse to follow a tribunal: see *A-G v Clough* supra at 785 and 423 per Lord Parker CJ.

5 Ie except the Contempt of Court Act 1981 s 9(3) (forfeiture of tape recorders and recordings: see para 407 head (5) ante): see s 20(1).

6 Ibid s 20(1). References to the course of justice or the administration of justice in legal proceedings must be construed accordingly: see s 20(1). For the meaning of 'court' and 'legal proceedings' see para 410 note 1 ante.

UPDATE

455 Tribunals under the Tribunals of Inquiry (Evidence) Act 1921

TEXT AND NOTES--1921 Act repealed: Inquiries Act 2005 s 49, Sch 3. See further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15A.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(4) CONTEMPT OF INFERIOR COURTS AND TRIBUNALS/456. Other tribunals.

456. Other tribunals.

The law of contempt is expressly applied to certain other statutory tribunals and bodies other than courts of law¹.

¹ See eg the Parliamentary Commissioner Act 1967 s 9(1); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 44. See also para 454 note 1 ante.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/2. CRIMINAL CONTEMPT/(4) CONTEMPT OF INFERIOR COURTS AND TRIBUNALS/457. Courts-martial.

457. Courts-martial.

Contempt of a court-martial is punishable by the Divisional Court of the Queen's Bench Division under its inherent supervisory jurisdiction¹. A court-martial may also itself punish offenders guilty of certain acts of contempt if the offenders are subject to military or air force law or are persons subject to the Naval Discipline Act 1957². A court-martial has no power of itself to punish civilians other than those who are so subject³, but may certify an offence by a civilian to a court of law⁴.

¹ See eg *R v Daily Mail, ex p Farnsworth* [1921] 2 KB 733; *R v Gunn, ex p A-G* [1954] Crim LR 53, DC. See also para 454 ante.

² See the Army Act 1955 s 57(1); the Air Force Act 1955 s 57(1); the Naval Discipline Act 1957 s 38(1); and ARMED FORCES. For the persons subject to military or air force law see the Army Act 1955 s 205 (as amended), s 206, s 207 (as amended), s 208, s 208A (as added), s 209 (as amended); the Air Force Act 1955 s 205 (as amended), s 206, s 207 (as amended), s 208, s 208A (as added), s 209 (as amended); and ARMED FORCES. For the persons subject to the Naval Discipline Act 1957 see ss 111-113 (as variously amended), ss 114-116, ss 117-118 (as variously amended), s 119; and ARMED FORCES.

³ As to civilians who are so subject see the Army Act 1955 s 209 (as amended); the Air Force Act 1955 s 209 (as amended); the Naval Discipline Act 1957 s 118, Sch 4 (both as amended); and ARMED FORCES.

⁴ See the Army Act 1955 s 101 (as amended); the Air Force Act 1955 s 101 (as amended); the Naval Discipline Act 1957 s 65(1); and ARMED FORCES. The court of law to which the offence is referred may inquire into the alleged offence and, after hearing all the evidence, including any statement offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified: see the Army Act 1955 s 101 (as amended); the Air Force Act 1955 s 101 (as amended); the Naval Discipline Act 1957 s 65(2); and ARMED FORCES.

UPDATE

457 [The Court Martial]

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to offences of misbehaviour in court, see now the Armed Forces Act 2006 s 309.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/458. Disobedience to process.

3. CIVIL CONTEMPT

(1) IN GENERAL

458. Disobedience to process.

It is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court¹ within the time specified in the judgment or order², or to disobey a judgment or order requiring a person to abstain from doing a specified act³. It is also a civil contempt to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction⁴.

A judgment or order against an individual or an undertaking given by an individual may, subject to certain exceptions⁵, be enforced by an order of committal or by a writ of sequestration against the individual's property⁶.

A judgment or order against a corporate body⁷ may be enforced by an order of committal against the directors or other officers of the corporation⁸. A director or other officer who is aware of the terms of such a judgment or order (or of an undertaking given by the corporation) may be committed for contempt of court if he wilfully fails to take adequate and continuing steps to ensure compliance, notwithstanding that he has not actively participated in the breach⁹. Further, the court may give leave for the issue of a writ of sequestration against the property of the corporation or of any of its directors or officers¹⁰; the corporation itself cannot be committed¹¹, but it can be fined¹².

1 A refusal to comply with a declaratory order does not constitute a contempt of court: see *Webster v Southwark London Borough Council* [1983] QB 698, [1983] 2 WLR 217; *D v D* (1990) Times, 16 November. A fortiori a failure to comply with such an order does not constitute a contempt of court; but a writ of sequestration may issue to enforce compliance with a declaratory order: *Webster v Southwark London Borough Council* supra; *D v D* supra.

2 Failure to comply within the time as extended or abridged under the rules of court is also contempt of court: see para 466 post.

3 For there to be a contempt there must be knowledge of the judgment or order, including knowledge of all material terms: *Re W (Wards) (Publication of Information)* [1989] 1 FLR 246 at 261 per Sir Stephen Brown P. See also *Spectravest Inc v Aperknit Ltd* [1988] FSR 161 at 173 per Millett J; *Z Bank v DI* [1994] 1 Lloyd's Rep 656 at 660 per Colman J; but cf *Re Witten (an infant)* (1887) 4 TLR 36 at 37 per Kay J (the respondent knew that an order had been made against him, but had not seen it, its effect having been communicated to him by his solicitor; it was held that he must take the consequences, and that carelessness in failing to make himself acquainted with the terms of the order was as gross a contempt as disobedience).

If a person charged with breach of an injunction swears positively that he did not believe the injunction had been granted, and is not cross-examined on the point, he will not be committed for contempt: see *Kimpton v Eve* (1813) 2 Ves & B 349; *Re Bishop, ex p Langley, ex p Smith* (1879) 13 ChD 110, CA.

4 As to breach of undertakings see paras 482-483 post.

5 See para 484 et seq post.

6 RSC Ord 45 r 5(1); cf CCR Ord 29 r 1. A penal notice may not be indorsed upon an order of the court which does not require a person either to do an act within a specified time or to abstain from doing a specified act, because the order is not one which is enforceable by committal: *Re P (Minors) (Custody Order: Penal Notice)* [1990] 1 WLR 613, [1990] 2 FLR 223, CA; *D v D* (1990) Times, 16 November.

7 Is whether or not incorporated under the Companies Act 1985: see generally COMPANIES; CORPORATIONS.

8 RSC Ord 45 r 5(1)(iii). The methods of enforcement provided by the rule are cumulative not alternative but generally they cannot be resorted to unless a copy of the order has been served personally on the director or other officer concerned: see Ord 45 r 7; and para 467 et seq post.

A motion to commit members of a local authority should not include the mayor where, by tradition, he takes no part in the decision-making process: *Webster v Southwark London Borough Council* [1983] QB 698 at 706, [1983] 2 WLR 217 at 222 per Forbes J.

9 *A-G for Tuvalu v Philatelic Distribution Corp'n Ltd* [1990] 2 All ER 216, [1990] 1 WLR 926, CA, explaining *Director General of Fair Trading v Buckland* [1990] 1 All ER 545, [1990] 1 WLR 920, RPC.

10 RSC Ord 45 r 5(1)(i), (ii). The court may direct the motion for sequestration to stand over for a period (*Cocks v Great Western Rly Co* (1886) 3 TLR 92, CA) and may direct the writ of sequestration to lie in the office for a period, so as to give the defendants time to comply with the order (see eg *A-G v Walthamstow UDC* (1895) 11 TLR 533; *Lee v Aylesbury UDC* (1902) 19 TLR 106; *Stancomb v Trowbridge UDC* [1910] 2 Ch 190; *Z Bank v DI* [1994] 1 Lloyd's Rep 656).

The remedy against an officer of a company is an alternative remedy, which the applicant cannot pursue unless he is also in a position to proceed against the company: *Benabo v William Jay & Partners Ltd* [1941] Ch 52, [1940] 4 All ER 196 (where a writ of attachment against two directors was refused, because the order served on the company was not properly indorsed). As to service of orders see para 467 et seq post; and as to indorsement see para 468 post.

Under the old rules of court (see the former RSC Ord 42 r 31), a judgment or order could only be enforced against a corporation by sequestration if there had been 'wilful' disobedience on the part of the corporation or its officers. The current RSC Ord 45 r 5(1) does not refer to wilful disobedience, but it appears that in practice proof of fault on the part of the contemnor is still required: see *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1973] AC 15 at 109, [1972] 3 All ER 101 at 117, HL, per Lord Wilberforce. To this extent, the authorities on the meaning of 'wilful' are still relevant: see eg *A-G v Walthamstow UDC* (1895) 11 TLR 533; *Lewis v Pontypridd, Caerphilly and Newport Rly Co* (1895) 11 TLR 203, CA; *Stancomb v Trowbridge UDC* [1910] 2 Ch 190; *Steiner Products Ltd v Willy Steiner Ltd* [1966] 2 All ER 387, [1966] 1 WLR 986; *Re Agreement of Mileage Conference Group of Tyre Manufacturer's Conference Ltd* [1966] 2 All ER 849, [1966] 1 WLR 1137; *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* supra at 108-109 and 117 per Lord Wilberforce.

11 *R v Windham* (1776) 1 Cowp 377; *Re Hooley, ex p Hooley* (1899) 79 LT 706.

12 See *R v JG Hammond & Co Ltd* [1914] 2 KB 866. See further COMPANIES vol 14 (2009) PARA 310; CORPORATIONS vol 9(2) (2006 Reissue) para 1293.

UPDATE

458-465 In General

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

458 Disobedience to process

NOTE 1--See *Raja v van Hoogstraten* [2004] EWCA Civ 968, [2004] 4 All ER 793.

NOTE 7--Companies Act 1985 replaced for the most part by Companies Act 2006.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/459. Unintentional disobedience.

459. Unintentional disobedience.

Contempt may be committed in the absence of wilful disobedience on the part of the contemnor¹. Although the court has power to order committal or sequestration in any case where contempt is found², the degree of culpability will be taken into account in determining the penalty and committal or sequestration will not be ordered unless the contempt involves a degree of fault or misconduct³. Thus accidental and unintentional disobedience is not sufficient to justify sequestration or committal⁴, but the respondent may be ordered to pay the costs of the application⁵.

In the case of disobedience by a corporate body, the act of any employee within the scope of his employment is treated as the act of the corporate body⁶.

¹ See eg *Stancomb v Trowbridge UDC* [1910] 2 Ch 190 at 194 per Warrington J; *Knight v Clifton* [1971] Ch 700 at 721, [1971] 2 All ER 378 at 393, CA, per Sachs LJ.

² *Guildford Borough Council v Valler* (1993) Times, 15 October, CA; *Z Bank v D1* [1994] 1 Lloyd's Rep 656 (repeated breaches of a Mareva injunction). See also *Miller v Scorey* [1996] 3 All ER 18 at 27-28, [1996] 1 WLR 1122 at 1132 per Rimer J.

³ *Shoppee v Nathan & Co* [1892] 1 QB 245 at 252. See also *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1973] AC 15, [1972] 3 All ER 101, HL. As to the extent to which the degree of culpability is taken into account in assessing the penalty to be imposed see *Walt Disney Productions Ltd v Gurnvitz* [1982] FSR 446; *Spectravest Inc v Aperknit Ltd* [1988] FSR 161 at 173-174 per Millett J; *A-G v Times Newspapers Ltd* [1992] 1 AC 191 at 217, [1991] 2 All ER 398 at 414-415, HL, per Lord Oliver of Aylmerton; *Guildford Borough Council v Valler* (1993) Times, 15 October, CA; *Z Bank v D1* [1994] 1 Lloyd's Rep 656 at 668 per Colman J; *Miller v Scorey* [1996] 3 All ER 18 at 27-28, [1996] 1 WLR 1122 at 1132 per Rimer J; *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* [1995] 1 AC 456 at 480-481, sub nom *Re Supply of Ready Mixed Concrete (No 2)*, *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* [1995] 1 All ER 135 at 156, HL, per Lord Nolan.

Reliance upon legal advice that the act done does not constitute a breach is not a defence, but may be taken into account in mitigation: see eg *Re Agreement of the Mileage Conference Group of the Tyre Manufacturers' Conference Ltd* [1966] 2 All ER 849 at 862, [1966] 1 WLR 1137 at 1162 per Megaw P; *Re M* [1994] 1 AC 377, sub nom *M v Home Office* [1993] 3 All ER 537, HL; *Z Bank v D1* supra at 660 per Colman J.

⁴ *Fairclough & Sons v Manchester Ship Canal Co (No 2)* (1897) 41 Sol Jo 225, CA, applied in *Worthington v Ad-Lib Club Ltd* [1965] Ch 236, [1964] 3 All ER 674. See also *Bullen v Ovey* (1809) 16 Ves 141 at 144; *Leonard v Attwell* (1810) 17 Ves 385 at 386; *Dodington v Hudson* (1824) 8 Moore CP 510; *R v Lord John Russell* (1839) 7 Dow 693 at 696; *Meters Ltd v Metropolitan Gas Meters Ltd* (1907) 51 Sol Jo 499; *Stancomb v Trowbridge UDC* [1910] 2 Ch 190; *Re Agreement of Mileage Conference Group of Tyre Manufacturers' Conference Ltd* [1966] 2 All ER 849, [1966] 1 WLR 1137.

⁵ See eg *Re Witten (an infant)* (1887) 4 TLR 36. See also para 510 post.

⁶ *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* [1995] 1 AC 456 at 465, sub nom *Re Supply of Ready Mixed Concrete (No 2)*, *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* [1995] 1 All ER 135 at 142, HL, per Lord Templeman, and at 481 and 156-157 per Lord Nolan. It is no defence for a company to show that its officers were unaware of the terms of an order or that they did not realise that the terms of an order were broken by their action (*Re Garage Equipment Association's Agreement* (1964) LR 4 RP 491 at 504-505 per Megaw J); or that the acts of the employees were expressly forbidden by senior management (*Director General of Fair Trading v Pioneer Concrete (UK) Ltd*, sub nom *Re Supply of Ready Mixed Concrete (No 2)*, *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* supra; and see *Express and Star Ltd v National Graphical Association* [1986] ICR 589, CA), although this may constitute mitigation (*Director General of Fair Trading v Pioneer Concrete (UK) Ltd*, sub nom *Re Supply of Ready Mixed Concrete (No 2)*, *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* supra at 475 and 151 per Lord Nolan). Failure to carry out an order for which there exists no excuse whatever will amount to a contempt for which sequestration may issue: see *Steiner Products Ltd v Willy Steiner Ltd* [1966] 2 All ER 387, [1966] 1 WLR 986 (breach of an undertaking). Want of funds may be a sufficient reason for not obeying a court order, but this defence must be properly made out: see *Lewis v Pontypridd, Caerphilly and Newport Rly Co* (1895) 11 TLR 203, CA.

UPDATE

458-465 In General

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

459 Unintentional disobedience

NOTES 3-5--The application for committal to prison ought to be dismissed with costs where the application is a disproportionate response to a trivial breach of a court order: *Adam Phones Ltd v Goldschmidt* (1999) Independent, 22 July.

NOTE 3--See *Parker (t/a NBC Services) v Rasalingham (t/a Micro Tec)* (2000) Times, 25 July (contemnor who believed legal advice to be inaccurate could not rely on it in mitigation).

Duress can amount to a mitigating factor rather than a defence: *The Coca-Cola Co v Aytacli* [2003] EWHC 91 (Ch), [2003] All ER (D) 291 (Jan).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/460. Where misconduct is involved.

460. Where misconduct is involved.

In circumstances involving misconduct, civil contempt bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the state, a penal or disciplinary jurisdiction to be exercised by the court in the public interest¹.

¹ See *Seaward v Paterson* [1897] 1 Ch 545 at 555-556, CA, per Lindley LJ; *Scott v Scott* [1913] AC 417 at 440, HL, per Viscount Haldane LC; *Jordan v Jordan* [1992] 2 FCR 701 at 704, [1993] 1 FLR 169 at 172, CA, per Lord Donaldson of Lynton MR; *Nicholls v Nicholls* [1997] 2 All ER 97 at 108-109, [1997] 1 WLR 314 at 326-327, CA, per Lord Woolf MR. See also *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* [1964] Ch 195, [1963] 3 All ER 493; *Guildford Borough Council v Valler* (1993) Times, 15 October, CA, per Staughton LJ.

This distinction has a bearing also on the question of privilege from arrest: see para 519 post.

UPDATE

458-465 In General

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/461. Orders improperly obtained.

461. Orders improperly obtained.

The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order¹. On an application to enforce an order irregularly made, the court will give the respondent the benefit of the fact that the order is irregular².

1 *Woodward v Earl of Lincoln* (1674) 3 Swan 626; *Drewry v Thacker* (1819) 3 Swan 529 at 546; *Fennings v Humphery* (1841) 4 Beav 1; *Blake v Blake* (1844) 7 Beav 514; *Chuck v Cremer* (1846) 2 Ph 113; *Eastern Trust Co v McKenzie, Mann & Co Ltd* [1915] AC 750 at 761, PC, per Sir George Farwell; *Hadkinson v Hadkinson* [1952] P 285 at 288-289, [1952] 2 All ER 567 at 569, CA, per Romer LJ; *Isaacs v Robertson* [1985] AC 97, [1984] 3 All ER 140, PC. It appears that the position may be different where the court making the order lacks jurisdiction, although it is not clear why this should be so: see *Isaacs v Robertson* supra. See also *Scott v Scott* [1913] AC 417, HL; *Re M* [1994] 1 AC 377, sub nom *M v Home Office* [1993] 3 All ER 537, HL.

2 *Drewry v Thacker* (1819) 3 Swan 529.

UPDATE**458-465 In General**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/462. Waiver.

462. Waiver.

A civil contempt can be waived by the opposing party by taking a step in the action¹. Acceptance of part of a sum ordered to be paid is not a waiver so as to preclude subsequent committal upon an order made previously to such acceptance².

1 *Anon* (1808) 15 Ves 174; *Best v Gompertz* (1837) 2 Y & C Ex 582; *Woodward v Twinaine* (1839) 9 Sim 301; *Harrison v Harrison* (1842) 4 Moo PCC 96; *Plumbe v Plumbe* (1844) 2 LTOS 439; *Oldfield v Cobbett* (1845) 1 Ph 557; *A-G v Shield* (1849) 11 Beav 441; *Herritt v Reynolds* (1860) 2 Giff 409; *Roberts v Albert Bridge Co* (1873) 8 Ch App 753. See also *Harman v Secretary of State for the Home Department* [1983] 1 AC 280 at 319, sub nom *Home Office v Harman* [1982] 1 All ER 532 at 549, HL, per Lord Scarman.

Where a court order has been made, the other party cannot give permission to the party subject to the order to act in breach of it: see para 472 text and note 1 post.

2 *Re Fereday* [1895] 2 Ch 437, distinguishing *Harvey v Hall* (1873) LR 16 Eq 324.

UPDATE**458-465 In General**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

462 Waiver

TEXT AND NOTE 1--*Accent Foundation Ltd v Lee* [2007] EWCA Civ 665, [2007] All ER (D) 143 (Jun) (the beneficiaries of an injunction could not waive contempt by the defendant as other beneficiaries were affected by the breach).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/463. Non-parties.

463. Non-parties.

A person not a party to a cause or matter, who obtains an order or in whose favour an order is made, is entitled to enforce obedience to it by the same process as if he were a party; and a person not a party against whom any judgment or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party¹.

1 RSC Ord 45 r 9. See eg *Re Floyd* (1909) 53 Sol Jo 790 at 801. As to a stranger to an action aiding and abetting the breach of an order see para 490 post.

UPDATE

458-465 In General

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/464. The Crown.

464. The Crown.

An order of committal does not lie against the Crown¹, although the Crown is under a duty to comply with orders of the court² and a government department or a minister of the Crown acting in his official capacity may be found to be in contempt³. There are special provisions relating to the satisfaction of orders against the Crown and the payment of money payable by the Crown⁴.

1 RSC Ord 77 r 15. See also para 487 post.

2 *Eastern Trust Co v McKenzie, Mann & Co Ltd* [1915] AC 750 at 759, PC. A person receiving payment from the Crown contrary to an order of the court may be guilty of contempt, despite the immunity of the Crown: see *Eastern Trust Co v McKenzie, Mann & Co Ltd* supra.

3 *Re M* [1994] 1 AC 377, sub nom *M v Home Office* [1993] 3 All ER 537, HL (in such a case a fine or sequestration would be inappropriate, but an order for costs may be made).

4 See the Crown Proceedings Act 1947 ss 25, 27 (both as amended); the Supreme Court Act 1981 s 139(2), (3); and CIVIL PROCEDURE vol 12 (2009) PARAS 1239, 1383, 1428; CROWN PROCEEDINGS AND CROWN PRACTICE. See also para 487 post.

UPDATE

458-465 In General

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

464 The Crown

NOTE 3--See *Beggs v The Scottish Ministers* [2007] UKHL 3, [2007] 1 WLR 455.

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(1) IN GENERAL/465. Power of court to punish by committal or sequestration.

465. Power of court to punish by committal or sequestration.

The power to order committal for civil contempt is a power to be exercised with great care¹. The court will only punish disobedience to an order of the court, or non-compliance with an undertaking, if satisfied that the terms of the order or undertaking are clear and unambiguous², that the defendant has proper notice of the terms³ and that a breach of the order or undertaking has been proved beyond reasonable doubt⁴.

In the case of the breach of a mandatory order requiring an act to be done, the court may only punish by committal or sequestration⁵ where a time is specified in the judgment or order within which the act is required to be done and the defendant refuses or neglects to do the act within the time specified⁶.

1 See eg *Gay v Hancock* (1887) 56 LT 726; *Wilson v Raffalovich* (1881) 7 QBD 553 at 561, CA. See also *Marshall v Marshall* (1966) 110 Sol Jo 112, CA. As to committal for civil contempt see para 506 post.

2 *Iberian Trust Ltd v Founders Trust and Investment Co Ltd* [1932] 2 KB 87. See also *PA Thomas & Co v Mould* [1968] 2 QB 913, [1968] 1 All ER 963.

3 As to the necessity of service of an order or judgment see para 467 post. As to giving notice of undertakings see para 482 post.

4 See eg *Re Bramblevale Ltd* [1970] Ch 128, [1969] 3 All ER 1062, CA; and see the cases referred to in para 472 note 5 post. See also para 501 post.

5 As to sequestration see para 507 post.

6 RSC Ord 45 r 5(1)(a); and see para 466 post. See also *Gilbert v Endean* (1878) 9 ChD 259 at 266, CA; *Re Wilde* [1910] WN 128, CA; *Townend v Townend* (1905) 93 LT 680, CA. As to breach of a declaratory order see para 458 note 1 ante.

UPDATE

458-465 In General

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(2) JUDGMENTS AND COURT ORDERS/(i) Operation of Judgments and Orders/466. Mandatory orders.

(2) JUDGMENTS AND COURT ORDERS

(i) Operation of Judgments and Orders

466. Mandatory orders.

As a general rule, a judgment or order which requires a person to do an act¹ must specify the time after service of the judgment or order, or some other time, within which the act is to be done². A time need not be specified in a judgment or order which requires a person to pay money to some other person, or to give possession of any land or deliver any goods, but the judgment or order in such a case may specify a time and must do so before committal or sequestration can issue³.

Where a time is specified in a judgment or order, it may be extended or abridged by the court⁴ or a supplemental order may subsequently be made⁵. Where a judgment or order omits to specify a time within which an act is to be done, the court is empowered subsequently to make a supplemental order⁶ requiring the act to be done within such time after service of that order, or such other time, as may be specified⁷.

1 The rule does not apply to orders which are merely prohibitive: *Selous v Croydon Rural Sanitary Authority* (1885) 53 LT 209; *Hudson v Walker* (1894) 64 LJ Ch 204; *Murphy v Willcocks* [1911] 1 IR 402. However, an order can be made fixing the time for compliance in the case of an order for an injunction which, although prohibitive in form, is mandatory in substance: *Mansell v Jones* [1905] WN 168, CA; and see para 469 post.

2 RSC Ord 42 r 2(1). A direction in an order to do an act forthwith is a sufficient expression of time under the rule: *Halford v Hardy* (1899) 81 LT 721. See *Thomas v Nokes* (1868) LR 6 Eq 521; but cf *Gilbert v Endean* (1878) 9 ChD 259 at 266, CA. See also *Higgins v --* (1803) 8 Ves 381. An order to do an act 'forthwith' means that the act is to be done within a reasonable time thereafter: see *Hillingdon London Borough Council v Cutler* [1968] 1 QB 124, [1967] 2 All ER 361, CA; and TIME vol 97 (2010) PARA 352.

3 RSC Ord 42 r 2(2).

4 le under RSC Ord 3 r 5.

5 le under RSC Ord 45 r 6(1). The practice of applying for a supplemental order varying the time specified extends to an order containing a positive undertaking to do a certain act within a specified time: *D v A & Co* [1900] 1 Ch 484; *Re Launder, Launder v Richards* (1908) 98 LT 554. See also *Halford v Hardy* (1899) 81 LT 721 (undertaking to do act forthwith, but a further order was needed before the undertaking was enforced); *Cotton v Heyl* [1930] 1 Ch 510 (undertaking to pay out of first moneys received).

6 In the Chancery Division a supplemental order is known as a 'four-day order', although the time after service of the order is not always four days: *Needham v Needham* (1842) 1 Hare 633. A four-day order has been held to be inapplicable to an order made under the Inheritance (Family Provision) Act 1938 (repealed: see now the Inheritance (Provision for Family and Dependants) Act 1975; and EXECUTORS AND ADMINISTRATORS): see *Re Jennery, Jennery v Jennery* [1967] Ch 280, [1967] 1 All ER 691, CA.

7 RSC Ord 45 r 6(1), (2). See also *Carter v Roberts* [1903] 2 Ch 312 at 321 per Byrne J (undertaking to pay money into court but no time specified: supplemental order required fixing time). An application for a supplemental order is made by summons and the summons must be served on the person required to do the act in question: RSC Ord 45 r 6(3).

UPDATE

466 Mandatory orders

TEXT AND NOTES--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(2) JUDGMENTS AND COURT ORDERS/(ii) Service of Orders/467. Necessity of personal service.

(ii) Service of Orders

467. Necessity of personal service.

As a general rule, no order¹ of court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question². In the case of an order requiring a person to do an act the copy must be so served before the expiration of the time within which he was required to do the act³.

Where the order is made against a company, the order may only be enforced against an officer of the company if the particular officer has been served personally with a copy of the order; and in the case of an order requiring the company to do an act within a specified time, the copy must be served on the officer before the expiration of that time⁴.

1 For these purposes, 'order' includes 'judgment': see RSC Ord 45 r 7(1). See also para 482 note 2 post.

2 RSC Ord 45 r 7(2)(a). The rule is subject to the provisions of Ord 24 r 16(3) and Ord 26 r 6(3), relating to the service of orders for discovery and interrogatories: see paras 470, 474 post. As to method of service generally, and for further exceptions to the rule, see paras 470-471 post.

Where an undertaking to do the act is embodied in an order, it may be enforced by committal without service: *D v A & Co* [1900] 1 Ch 484; *Re Launder, Launder v Richards* (1908) 98 LT 554.

3 RSC Ord 45 r 7(2)(b). As to time for service see further para 469 post.

4 RSC Ord 45 r 7(3). See also para 470 post.

UPDATE

467-471 Service of Orders

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

467 Necessity of personal service

NOTES 1-3--The court has a wide discretion to dispense with the requirement of personal service: *Benson v Richards* [2002] EWCA Civ 1402, [2002] All ER (D) 160 (Oct). See also *Anglo-Eastern Trust v Kermanshahchi* [2002] All ER (D) 296 (Oct).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(2) JUDGMENTS AND COURT ORDERS/(ii) Service of Orders/468. Indorsement of order.

468. Indorsement of order.

There must be prominently displayed on the front of the order a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible¹.

The indorsement must be made on the copy of all orders which are required to be served, whether personally or not², even where the defendant on whom service is to be effected is a limited company³.

1 RSC Ord 45 r 7(4). See also *Stockton Football Co v Gaston* [1895] 1 QB 453. As to the meaning of 'order' see para 467 note 1 ante.

Such a warning may not be indorsed upon an order of the court which does not require a person either to do an act within a specified time or to abstain from doing a specified act, because the order is not one which is enforceable by committal: *Re P (Minors) (Custody Order: Penal Notice)* [1990] 1 WLR 613, CA; *D v D* (1990) Times, 16 November.

There is no discretion to dispense with the requirements of RSC Ord 45 r 7(4): *Moerman-Lenglet v Henshaw* (1992) Times, 23 November. As to dispensing with service see para 471 post.

2 Eg an order for discovery where service on the solicitor is sufficient: see para 470 post. For an example of an instance when service on a solicitor was held to be sufficient see *Hampden v Wallis* (1884) 26 ChD 746, CA.

3 *Benabo v William Jay & Partners Ltd* [1941] Ch 52, [1940] 4 All ER 196.

UPDATE

467-471 Service of Orders

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

468 Indorsement of order

NOTE 1--It is for the person who creates a copy of the order for service to put the penal notice on it: *Anglo-Eastern Trust v Kermanshahchi* [2002] All ER (D) 296 (Oct).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(2) JUDGMENTS AND COURT ORDERS/(ii) Service of Orders/469. Time for service.

469. Time for service.

An order requiring an act to be done within a particular time¹ must be served personally on the person required to do the act within that time².

A mandatory injunction in a prohibitory form³ can be enforced by obtaining a supplemental order fixing a time for compliance, and then moving for committal upon proof of personal service of both orders, the supplemental order being indorsed with the penal notice⁴. Where the time for doing the act is extended by supplemental order, service within the extended time will suffice⁵.

Where an order by consent to do an act by a day named has not been personally served, an order to extend the time can only be obtained by consent⁶.

1 As to mandatory orders, and the fixing of the time within which an act must be done, see para 466 ante.

2 RSC Ord 45 r 7(2)(b), (3)(b). See also *Duffield v Elwes* (1840) 2 Beav 268; *Iberian Trust Ltd v Founders Trust and Investment Co Ltd* [1932] 2 KB 87 at 96 per Luxmoore J; *Gordon v Gordon* [1946] P 99, [1946] 1 All ER 247, CA. Cf *Century Insurance Co Ltd v Larkin* [1910] 1 IR 91; *McClure v McClure* [1951] IR 137.

3 As to the distinction, as regards enforcement, between negative orders forbidding acts and positive orders requiring acts to be done see *Re Tuck, Murch v Loosemore* [1906] 1 Ch 692, CA. See also *Jackson v Normanby Brick Co* [1899] 1 Ch 438, CA.

4 *Mansell v Jones* [1905] WN 168, CA. See also *Angerstein v Hunt* (1801) 6 Ves 488. As to supplemental orders see para 466 ante. As to indorsement with a penal notice see para 468 ante.

If a supplemental order simply extends the time for doing an act, indorsement is not required under RSC Ord 45 r 7(4) (see para 468 ante), provided the first order is so indorsed (*Treherne v Dale* (1884) 27 ChD 66, CA), but it must be personally served (*Re Seal, Re Seal and Edgelow* [1903] 1 Ch 87).

5 *Treherne v Dale* (1884) 27 ChD 66, CA. See also *Re Seal, Re Seal and Edgelow* [1903] 1 Ch 87.

6 *Australasian Automatic Weighing Machine Co v Walter* [1891] WN 170.

UPDATE

467-471 Service of Orders

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(2) JUDGMENTS AND COURT ORDERS/(ii) Service of Orders/470. Service.

470. Service.

A copy of the order, duly indorsed¹, must be served personally on the person required to do or refrain from doing a specified act². Personal service involves leaving a copy of the document with the person to be served³. Personal service on a company may be effected by leaving the copy at the company's registered office⁴.

Personal service of an order upon an officer of a company must be proved before he can be committed for disobedience to an order against the company⁵.

An order made against parties jointly and severally liable may be enforced against any one of them who has been served with the order, even if the order cannot be served upon the others⁶.

Service on a party's solicitor of an order to answer interrogatories or for discovery or production of documents made against that party is sufficient to found an application for committal of the party for disobedience to the order⁷.

Upon an affidavit showing sufficient grounds for the application, an order for substituted service of the order to be enforced may be obtained *ex parte*⁸.

1 As to indorsement see para 468 ante.

2 See para 467 ante.

3 RSC Ord 65 r 2. If an order is subsequently made under Ord 3 r 5 (see para 466 ante) extending or abridging the time for the required act to be done, or under Ord 45 r 6 (see para 466 ante) or Ord 45 r 5 (see para 458 ante) specifying a time, or another time, within which a required act is to be done, copies of the subsequent orders must also be served personally on the defendant: see *Re Seal, Re Seal and Edgelow* [1903] 1 Ch 87.

As to the manner of effecting personal service see RSC Ord 65 r 2.

4 See the Companies Act 1985 s 725(1). See also *Benabo v William Jay & Partners Ltd* [1941] Ch 52, [1940] 4 All ER 196.

5 RSC Ord 45 r 7(3). See also *McKeown v Joint Stock Institute Ltd* [1899] 1 Ch 671; *Iberian Trust Ltd v Founders Trust and Investment Co Ltd* [1932] 2 KB 87 at 97-98 per Luxmoore J; *Redwing Ltd v Redwing Forest Products Ltd* (1947) 177 LT 387; and para 467 ante.

6 *Re Ellis, Hardcastle v Ellis* (1906) 95 LT 80.

7 RSC Ord 24 r 16(3); Ord 26 r 6(3). The party may show in answer to the application that he had no notice or knowledge of the order: Ord 24 r 16(3); Ord 26 r 6(3).

8 See RSC Ord 45 r 7(7); Ord 65 r 4. See also *Re A Solicitor* [1892] WN 22; *Whyte-Melville v Whyte-Melville* (1888) 4 TLR 491; *Worboys v Worboys* [1953] P 192, [1953] 1 All ER 857 (order for security for wife's costs). For early cases of substituted service see *Skegg v Simpson* (1848) 2 De G & Sm 454, and the cases set out in that report. As to substituted service generally see CIVIL PROCEDURE.

UPDATE

467-471 Service of Orders

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

470 Service

NOTE 4--Companies Act 1985 s 725(1) replaced by Companies Act 2006 s 1139(1): see COMPANIES vol 14 (2009) PARA 671.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(2) JUDGMENTS AND COURT ORDERS/(ii) Service of Orders/471. Dispensing with service.

471. Dispensing with service.

Where an order requires a person to abstain from doing an act, the order may be enforced, notwithstanding that service of a duly indorsed¹ copy of the order has not been served, if the court is satisfied that pending such service, the person against whom enforcement is sought has had notice² of the terms of the order either by being present when the order was made³ or by being notified of the terms of the order, whether by telephone, telegram⁴ or otherwise⁵.

The court may dispense with service of a copy of the order if it thinks it just to do so⁶.

1 As to indorsement see para 468 ante.

2 Such notice must be proved beyond all reasonable doubt: *Churchman v Joint Shop Stewards' Committee of Workers of the Port of London* [1972] 3 All ER 603 at 606, [1972] 1 WLR 1094 at 1098, CA, per Lord Denning MR.

3 See eg *Hearn v Tennant* (1807) 14 Ves (2nd Edn) 136; *Husson v Husson* [1962] 3 All ER 1056, [1962] 1 WLR 1434; *Turner v Turner* (1978) 122 Sol Jo 696, CA.

4 See eg *Re Bryant* (1876) 4 ChD 98; *The Seraglio* (1885) 10 PD 120. It is a desirable practice for the telegram to be sent by the solicitor of the party obtaining the order to a solicitor at the place where the defendant is, instructing him to give notice to the defendant of the order: *Re Bishop, ex p Langley, ex p Smith* (1879) 13 ChD 110, CA; *The Seraglio* (1885) 10 PD 120.

5 RSC Ord 45 r 7(6); cf CCR Ord 29 r 1(6). See also para 458 note 3 ante. An order to abstain from doing an act may therefore be enforced where a copy is served without the due indorsement, notice of the terms of the order being given 'otherwise': *Sofroniou v Szgetti* [1991] FCR 332n, (1990) Times, 19 September, CA. See also *D v D* (1990) Times, 16 November. Cf *Cleveland County Council v L* (1996) Times, 8 April, CA (order not served, and no evidence that the person subject to the order had been told what the consequences of breach would be).

For examples of other means of receiving notice see *Heywood v Wait* (1869) 18 WR 205 (service of minutes of order verified by signature of registrar); *Avery v Andrews* (1882) 51 LJ Ch 414 (notice given at meeting and attendant publicity). See also *Anon* (1747) 3 Atk 567; *Skip v Harwood* (1747) 3 Atk 564; *United Telephone Co v Dale* (1884) 25 ChD 778.

Formal service of the completed order should be effected as soon as possible: *James v Downes* (1812) 18 Ves 522; *Vansandau v Rose* (1820) 2 Jac & W 264.

6 RSC Ord 45 r 7(7). Service may be dispensed with either at the time of making the order or subsequently: *Davy International Ltd v Tazzyman* [1997] 3 All ER 183, [1997] 1 WLR 1256, CA. See also *Turner v Turner* (1978) 122 Sol Jo 696, CA.

UPDATE

467-471 Service of Orders

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

471 Dispensing with service

NOTE 6--See *Jolly v Staines County Court circuit judge; Jolly v Jolly* [2000] 2 FCR 59, CA (a county court, as a matter of discretion, is empowered to dispense with the requirement of service of a penal notice in exceptional cases).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(3) DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY/472. Breach of injunction.

(3) DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY

472. Breach of injunction.

The terms of an injunction must be strictly observed¹. Where an injunction is mandatory in its terms, it is the duty of the party bound by the injunction to discover the proper means of obeying the order².

The court will only punish as a contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous³, that the defendant has proper notice of the terms⁴ and that breach of the injunction has been proved beyond reasonable doubt⁵.

1 *Spokes v Banbury Board of Health* (1865) LR 1 Eq 42. See also *Knight v Clifton* [1971] Ch 700, [1971] 2 All ER 378, CA. The same principle applies to both a final injunction and an interim injunction: see eg *Eastern Trust Co v McKenzie, Mann & Co Ltd* [1915] AC 750, PC. Where there is difficulty in complying with an injunction, the proper course may be to apply to the court for a suspension: see eg *A-G v Colney Hatch Lunatic Asylum* (1868) 4 Ch App 146; *Day v Longhurst* (1893) 62 LJ Ch 334.

Once a court order has been made it is not open to the applicant to give permission to the party subject to the order to act in breach of it: *R v IRC, ex p Kingston Smith* [1996] STC 1210.

It appears that a plaintiff who tests the defendant's compliance with an order is not debarred from relying upon any breach occasioned thereby: *Walt Disney Productions Ltd v Gurvitz* [1982] FSR 446 (breach of an undertaking rather than an order).

2 *A-G v Walthamstow UDC* (1895) 11 TLR 533. See also *Spokes v Banbury Board of Health* (1865) LR 1 Eq 42.

3 *Iberian Trust Ltd v Founders Trust and Investment Co Ltd* [1932] 2 KB 87; *R v City of London Magistrates' Court, ex p Green* [1997] 3 All ER 551, (1997) Times, 13 March, DC; and see *PA Thomas & Co v Mould* [1968] 2 QB 913, [1968] 1 All ER 963. See also para 465 ante.

If a dispute arises as to whether a proposed design breaches the terms of an undertaking, the parties may apply to the court: *Spectravest Inc v Aperknit Ltd* [1988] FSR 161 at 185 per Millett J.

4 See *R v City of London Magistrates' Court, ex p Green* [1997] 3 All ER 551, (1997) Times, 13 March. See also para 465 ante. As to notice see para 467 et seq ante. See also paras 458 note 3 ante, 482 post.

5 *Re Bramblevale Ltd* [1970] Ch 128, [1969] 3 All ER 1062, CA; *Knight v Clifton* [1971] Ch 700, [1971] 2 All ER 378, CA; *Churchman v Joint Shop Stewards' Committee of Workers of the Port of London* [1972] 3 All ER 603, [1972] 1 WLR 1094, CA; *Kent County Council v Batchelor* (1976) 33 P & C R 185, 75 LGR 151, CA. See also para 465 ante.

UPDATE

472-478 Disobedience to Orders other than for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

472 Breach of injunction

NOTES--In order to establish a contempt of court in breach of an injunction, there is no need to establish a wilful intention to breach the order, but merely that the contemnor

understood what he must not do and the consequences: *P v P (contempt of court: mental capacity)* [1999] 2 FLR 897, CA.

NOTE 4--See also *Belgolaise SA v Purchandani* (1998) Times, 30 July (failure of order for cross-examination to contain penal notice).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(3) DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY/473. Disobedience to order for possession of land or delivery of goods.

473. Disobedience to order for possession of land or delivery of goods.

It is a contempt to disobey a judgment or order for the giving of possession of land. Such a judgment or order may, however, only be enforced by committal or sequestration if it specifies the time within which the act is required to be done, and the defendant refuses or neglects to do it within that time¹; but as a judgment or order to give possession of land does not generally specify the time within which the act is to be done², the remedies of committal and sequestration are rarely available³.

It is also a contempt to disobey a judgment or order for the delivery of goods. The contempt is punishable by committal or sequestration only in a case where the order does not give the defendant the alternative of paying the assessed value of the goods and where a time is specified within which the act is to be done⁴.

1 RSC Ord 45 rr 3(1)(b), (c), 5(1). See also paras 465-466 ante.

2 See RSC Ord 42 r 2(2); and para 466 ante.

3 An application may be made to the court for an order fixing the time within which a defendant is required to give possession: see RSC Ord 45 r 6(2); and para 466 ante. The more usual remedy is a writ of possession. See also *Danchevsky v Danchevsky* [1975] Fam 17, [1974] 3 All ER 934, CA (in the case of a dispute over the sale of a matrimonial home it is not appropriate to commit for contempt when the court's order as to the sale has not been complied with, and the desired objective can be achieved by other means); *Larkman v Lindsell* [1989] Fam Law 229, CA; *C v C (Contempt: Committal)* [1989] Fam Law 477.

4 See RSC Ord 45 rr 4(1)(b), (c), 5(1). In practice such an order is rarely enforced by committal or sequestration since, as in the case of land, the order seldom specifies any time limit. But see Ord 45 r 6(2); and para 466 ante. The normal remedy is by writ of delivery or specific delivery.

UPDATE

472-478 Disobedience to Orders other than for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

473 Disobedience to order for possession of land or delivery of goods

NOTE 1--The breach of a warrant predating the day on which possession is to be given up will not give rise to contempt, as the warrant itself is a nullity: *Bell v Tuohy* [2002] EWCA Civ 423, [2002] 3 All ER 975, [2002] 1 WLR 2703.

NOTE 4--See *Thorpe v Thorpe* [1998] 2 FCR 384, CA (committal is for the contumely expressed to the court, and does not relate to the value of the items).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(3) DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY/474. Failure to comply with order for interrogatories, discovery, or production of documents.

474. Failure to comply with order for interrogatories, discovery, or production of documents.

If a party fails to comply with an order to answer interrogatories, or for discovery, or for the production or inspection of documents, he is liable to committal for contempt¹. Before a person can be found guilty of contempt for failing to produce documents pursuant to a court order, it must be proved beyond reasonable doubt that, at the time of the order, the defendant had possession of the documents² and was in a position to produce them³. The party in default may show in answer to an application to commit that he had no notice or knowledge of the order sought to be enforced⁴.

1 RSC Ord 24 r 16(2), Ord 26 r 6(2); and see eg *Alliance and Leicester Building Society v Ghahremani* [1992] RVR 198, [1992] NLJR 313. He is also, if a plaintiff, liable to have his action dismissed and, if a defendant, to have his defence struck out: RSC Ord 24 r 16(1) (discovery); Ord 26 r 6(1) (interrogatories). A plaintiff may proceed against his co-plaintiff for failing to comply with an order for discovery obtained by the defendant: see *Seal and Edgelow v Kingston* [1908] 2 KB 579, CA. See also *Price v Price* (1879) 48 LJ Ch 215; *Thomas v Palin* (1882) 21 ChD 360, CA (both cases of insufficient affidavits; applications for a writ of attachment granted).

2 See *Re Bramblevale Ltd* [1970] Ch 128, [1969] 3 All ER 1062, CA.

3 See *Eccles & Co v Louisville and Nashville Railroad Co* [1912] 1 KB 135, CA (servant, who was not a party to proceedings but a witness under an order for examination, refused to produce documents of his master in his possession; no attachment ordered). Where the documents are in the possession of a company, an order should be sought against the company and not against an individual officer of the company: see *Penn-Texas Corp v Murat Anstalt (No 2)* [1964] 2 QB 647 at 663, [1964] 2 All ER 594 at 598-599, CA, per Lord Denning MR. See also *Seal and Edgelow v Kingston* [1908] 2 KB 579, CA.

4 See RSC Ord 24 r 16(3), Ord 26 r 6(3); and para 470 text and note 7 ante.

UPDATE

472-478 Disobedience to Orders other than for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(3) DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY/475. Arbitration awards; mandamus etc; habeas corpus.

475. Arbitration awards; mandamus etc; habeas corpus.

Where leave has been given to enforce an arbitration award as a judgment or order and judgment is entered in terms of the award, an application for committal may be made in the event of a breach of that judgment or order¹.

It is a contempt to disobey an order of mandamus², prohibition or certiorari³.

Disobedience to a writ of habeas corpus by the person to whom the writ is directed is also a contempt punishable by committal⁴. Before a contempt can be committed, the writ of habeas corpus must be served personally on the defendant⁵. If personal service is not possible, or if it is directed to a governor of a prison or other public official, the writ must be served by leaving it with a servant or agent of the person to whom the writ is directed, at the place where the person restrained is confined⁶. The original writ must be served⁷, but where the writ is directed to more than one person, the original must be served on the person first named in it and copies served on the others⁸.

1 See ARBITRATION vol 2 (2008) PARA 1274.

2 *R v Poplar Metropolitan Borough Council, ex p Metropolitan Asylums Board (No 2)* [1922] 1 KB 95, CA. See also *R v Leicester Union* [1899] 2 QB 632, DC. The motive with which the order is disobeyed is irrelevant to the question whether a contempt has been committed: see *R v Poplar Metropolitan Borough Council, ex p Metropolitan Asylums Board (No 2)* supra at 103.

As to mandamus see JUDICIAL REVIEW vol 61 (2010) PARA 602. See also RSC Ord 45 r 8.

3 *Munegan v Wheatley* (1851) 6 Exch 88. As to the orders of prohibition and certiorari see generally JUDICIAL REVIEW vol 61 (2010) PARA 602.

4 *Re Thompson, R v Woodward* (1889) 5 TLR 565, 601. Cf *Egan v Macready* [1921] 1 IR 265 at 280 per O'Connor MR. As to habeas corpus see generally ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 207 et seq.

5 RSC Ord 54 r 6(1). There must be served with the writ a notice, in the prescribed form, stating the court or judge before whom and the date on which the person restrained is to be brought and that, in default of obedience, proceedings for committal of the party disobeying will be taken: Ord 54 r 6(4).

6 RSC Ord 54 r 6(2).

7 See *R v Rowe* (1894) 11 TLR 29. See *R v Barnardo* (1889) 23 QBD 305, CA.

8 RSC Ord 54 r 6(3).

UPDATE

472-478 Disobedience to Orders other than for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(3) DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY/476. Disobedience to subpoenas, witness orders etc.

476. Disobedience to subpoenas, witness orders etc.

Failure to attend under a subpoena ad testificandum or a subpoena duces tecum¹ is punishable, in the absence of a reasonable excuse², by committal³, which should be applied for at the

earliest opportunity⁴. Failure to attend the court in civil proceedings will only amount to a contempt if full conduct money has been tendered with the subpoena⁵.

In criminal proceedings any person who without just excuse disobeys a witness summons requiring him to attend before any court is guilty of contempt of that court, and may be punished summarily by that court as if his contempt had been committed in the face of the court⁶.

1 As to subpoenas generally see RSC Ord 38 rr 14-19; and CIVIL PROCEDURE vol 11 (2009) PARA 1003 et seq.

2 See eg *More v Woreham* (1580) Cary 99; *Scholes v Hilton* (1842) 10 M & W 15 (illness a reasonable excuse). See also CIVIL PROCEDURE vol 11 (2009) PARA 1016.

3 *Wyat v Wingford* (1729) 2 Ld Raym 1528; *Scholes v Hilton* (1842) 10 M & W 15; *R v Daye* [1908] 2 KB 333. A court will in practice only punish by imprisonment where a clear case of contempt is made out: see eg *Horne v Smith* (1815) 6 Taunt 9; *Garden v Creswell* (1837) 2 M & W 319; *Scholes v Hilton* supra. See further CIVIL PROCEDURE vol 11 (2009) PARA 1016.

The aggrieved party may at common law recover damages from the witness limited to the amount of costs thrown away by non-attendance: *Roberts v J & F Stone Lighting and Radio Ltd* (1945) 172 LT 240.

As to other contempts by witnesses see para 407 head (6) ante.

4 *R v Stretch* (1835) 4 Dowl 30.

5 *Fuller v Prentice* (1788) 1 Hy Bl 49; *Brocas v Lloyd* (1856) 23 Beav 129; *Re Working Men's Mutual Society* (1882) 21 ChD 831. See further CIVIL PROCEDURE vol 11 (2009) PARA 1016.

6 See the Criminal Procedure (Attendance of Witnesses) Act 1965 s 3(1) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1410. The maximum penalty is three months' imprisonment: see s 3(2). As from a day to be appointed, similar provisions apply to any person who without just excuse disobeys a requirement to produce a document or thing for inspection in advance of the proceedings: see ss 2A, 3(1A) (both prospectively added by the Criminal Procedure and Investigations Act 1996 s 66). At the date at which this volume states the law no such day had been appointed. The offence is an absolute one, and there is no requirement that disobedience should be wilful or deliberate: *R v Lennock* (1993) 97 Cr App Rep 228 at 232, CA, per Morland J. Culpable forgetfulness on the part of a witness does not constitute just excuse for failure to attend: *R v Lennock* supra at 232 per Morland J.

As to contempt in the face of the court by a witness see also para 407 head (6) ante. As to witness summonses see CIVIL PROCEDURE vol 11 (2009) PARA 1003 et seq.

UPDATE

472-478 Disobedience to Orders other than for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

476 Disobedience to subpoenas, witness orders etc

NOTE 6--As to factors to be considered when imposing sentence for contempt following failure to attend to give evidence see *R v Yusuf* [2003] EWCA Crim 1488, [2003] 2 Cr App Rep 488.

477. Disobedience to other orders.

Disobedience to an order made in family proceedings may be a contempt of court¹.

When an order is made by consent staying an action on terms set out in a schedule to the order, and one of the parties fails to comply with the terms, the remedy of the injured party is to apply, not for committal, but for an order for specific performance or an injunction, and then to base proceedings for contempt on any subsequent breach².

1 See eg *Stark v Stark and Hitchins* [1910] P 190 at 192, CA (order in divorce decree as to custody of child of the marriage); *Baker v Baker (No 2)* [1997] 1 FLR 148, CA (ancillary financial relief; failure to comply with lump sum order held to be a contempt of court). See also *Kavanagh v Kavanagh* (1978) 128 NLJ 1007, (1978) Times, 26 July, CA (order of the court that the matrimonial home be vacated); but cf para 473 note 3 ante. As to parental responsibility in relation to children, and orders under the Children Act 1989, see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) paras 133 et seq, 247 et seq.

2 *Dashwood v Dashwood* (1927) 71 Sol Jo 911; and see *Practice Note* [1927] WN 290. Where, however, there is an express direction or undertaking in the body of the order, a breach will enable an immediate application for committal to be made. As to breach of undertakings see paras 482-483 post.

UPDATE

472-478 Disobedience to Orders other than for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

477 Disobedience to other orders

NOTE 1--Where a violent assault occurs as a result of a breach of a non-molestation order, the appropriate action will be a custodial sentence: *N v R (non-molestation order: breach)* [1998] 2 FLR 1068.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(3) DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY/478. Disobedience to orders of magistrates' court.

478. Disobedience to orders of magistrates' court.

The powers of a magistrates' court¹ to punish by fine or committal for disobeying an order to do anything other than the payment of money² or to abstain from doing anything may be exercised either of the court's own motion or by order on complaint³.

1 Ie under the Magistrates' Courts Act 1980 s 63(3) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6. Under this provision, where any person disobeys an order of a magistrates' court to do anything other than the payment of money or to abstain from doing anything, the court may order him to pay a sum not exceeding £50 for every day during which he is in default or a sum not exceeding £5,000, or commit him to custody until he has remedied his default or for a period not exceeding two months: see s 63(3) (as amended). However, a person who is ordered to pay a sum for every day during which he is in default or who is committed to custody until he has remedied his default may not be ordered to pay more than £1,000 or be committed for more than two months in all for doing or abstaining from doing the same thing contrary to the

order; but this is without prejudice to the operation of these provisions in relation to any subsequent default: see s 63(3) (as amended). This provision does not apply to any order for the enforcement of which provision is made by any other enactment: see s 63(5). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6.

There is no power to suspend an order for committal, but the justices may grant a stay of execution: see *B (BPM) v B (MM)* [1969] P 103, sub nom *B (B) v B (M)* [1969] 1 All ER 891, DC.

As to an appeal from an order or decision of a magistrates' court see para 512 et seq post.

2 As to the powers of a magistrates' court on disobedience to an order for the payment of money see para 489 post.

3 Contempt of Court Act 1981 s 17(1). In relation to the exercise of those powers, the provisions of the Magistrates' Courts Act 1980 apply subject to certain modifications: see the Contempt of Court Act 1981 s 17(2), Sch 3.

UPDATE

472-478 Disobedience to Orders other than for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(4) DISOBEDIENCE TO STATUTORY OBLIGATIONS, ETC/479. Bankruptcy.

(4) DISOBEDIENCE TO STATUTORY OBLIGATIONS, ETC

479. Bankruptcy.

Analogous to contempt by disobedience to a judgment, order, or process, are certain defaults in connection with bankruptcy, which are declared to be contempts by the Insolvency Act 1986¹.

A bankrupt who without reasonable excuse fails to do any of the following is guilty of contempt of court and liable to be punished accordingly, in addition to any other punishment to which he may be subject: (1) attend his public examination²; (2) deliver possession of his estate to the official receiver and deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs³; (3) in the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver and in the case of any property that may be claimed for the bankrupt's estate by the trustee, do all such things as may reasonably be required by the official receiver for the protection of those things or that property⁴; (4) give the official receiver such inventory of his estate and such other information as the official receiver may⁵ reasonably require⁶; (5) attend on the official receiver at such times as the official receiver may⁷ reasonably require⁸; (6) deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession⁹; (7) give to the trustee such information as to his affairs, attend on the trustee at such times, and do all such other things as the trustee may¹⁰ reasonably require¹¹; (8) give the trustee notice of after-acquired property or of an increase of his income¹².

If the official receiver, a person who has ceased to be trustee of the bankrupt's estate, or a person who has been the supervisor of an approved voluntary arrangement in relation to the bankrupt, fails without reasonable excuse to deliver up to the trustee possession of the

property, books, papers or other records of which the trustee is required to take possession, he is guilty of contempt of court and liable to be punished accordingly, in addition to any other punishment to which he may be subject¹³. Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt, and who fails without reasonable excuse to pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee, is guilty of a contempt of court and liable to be punished accordingly, in addition to any other punishment to which he may be subject¹⁴.

An undischarged bankrupt, or a discharged bankrupt whose estate is still being administered, who fails to do such things as he may be directed to do by the court for the purposes of his bankruptcy, or the administration of his estate, is guilty of contempt of court and liable to be punished accordingly, in addition to any other punishment to which he may be subject¹⁵.

1 As to bankruptcy and insolvency generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; and as to corporate insolvency see COMPANY AND PARTNERSHIP INSOLVENCY. As to a liquidator who fails to comply with a court order directing him to make good a default see para 480 note 6 post.

2 See the Insolvency Act 1986 s 290(5); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 296.

3 See *ibid* s 291(1), (6); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 243.

4 See *ibid* s 291(2), (6); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 243.

5 *Id* for any of the purposes of *ibid* Pt IX Ch II (ss 283-291) (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

6 See *ibid* s 291(4), (6); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 243.

7 See note 5 *supra*.

8 See the Insolvency Act 1986 s 291(4), (6); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 243.

9 See *ibid* s 312(1), (4); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 396.

10 *Id* for the purposes of carrying out his functions under any of *ibid* Pts VIII-XI (ss 252-385) (as amended): see generally BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

11 See *ibid* s 333(1), (4); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 345, 646.

12 See *ibid* s 333(2), (4); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 447, 455.

13 See *ibid* s 312(2), (4); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 396.

14 See *ibid* s 312(3), (4); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 396.

15 See *ibid* s 363(2), (3), (4); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 219.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(4) DISOBEDIENCE TO STATUTORY OBLIGATIONS, ETC/480. Investigation of companies.

480. Investigation of companies.

If any officer or agent of a company or other body corporate whose affairs are being investigated¹ (1) fails to produce to inspectors² all documents of or relating to the company or,

as the case may be, the other body corporate which are in his custody or power, or fails otherwise to give the inspectors all assistance in connection with the investigation which he is reasonably able to give³; or (2) refuses to comply with a requirement to produce documents, to attend before the inspectors or to give assistance⁴; or (3) refuses to answer any question put to him by the inspectors for the purposes of the investigation, the inspectors may certify that fact in writing to the court⁵. The court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court⁶.

1 Ie investigated under the Companies Act 1985 Pt XIV (ss 431-453) (as amended): see COMPANIES vol 15 (2009) PARA 1541 et seq.

2 Ie inspectors appointed under *ibid* ss 431, 432 (as amended): see COMPANIES vol 15 (2009) PARAS 1541-1542.

3 As to the duty to produce documents and to assist the inspectors see *ibid* s 434(1)(a) (as amended), s 434(1)(c); and COMPANIES vol 15 (2009) PARA 1544.

4 As to the duty to attend, and to comply with requirements, see *ibid* s 434(1)(b), (2) (as substituted); and COMPANIES vol 15 (2009) PARA 1544.

5 See *ibid* s 436(1) (as substituted); and COMPANIES vol 15 (2009) PARA 1544. The relevant court is the court having jurisdiction to wind up the company: see COMPANIES vol 15 (2009) PARA 1611.

6 See *ibid* s 436(3); and COMPANIES vol 15 (2009) PARA 1544.

A liquidator who fails to comply with an order of the court directing him to make good a default may also be guilty of contempt: see eg *Re S & A Conversions Ltd* (1988) 4 BCC 384, [1988] NLJR 169, CA. See also *Re Grantham Wholesale Fruit Vegetable and Potato Merchants Ltd* [1972] 1 WLR 559, 116 Sol Jo 332 (decided under earlier legislation).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(4) DISOBEDIENCE TO STATUTORY OBLIGATIONS, ETC/481. Charity Commissioners.

481. Charity Commissioners.

Disobedience to certain orders¹ of the Charity Commissioners may, on the application of the commissioners to the High Court, be dealt with as for disobedience to an order of the High Court².

1 Ie an order of the Charity Commissioners (1) under the Charities Act 1993 s 9(1) (documents) (see CHARITIES vol 8 (2010) PARA 557), s 44(2) (audits) (see CHARITIES vol 8 (2010) PARA 355), s 61 (dissolution of incorporated body) (see CHARITIES vol 8 (2010) PARA 262), s 73 (acting as charity trustee while disqualified) (see CHARITIES vol 8 (2010) PARA 274), or s 80 (Scottish charities); or (2) under s 16 or s 18 (powers of commissioners to make schemes, act for protection of charities, etc) requiring a transfer of property or payment to be called for or made (see generally CHARITIES vol 8 (2010) PARAS 187 et seq, 561, 566); or (3) requiring a default under the Charities Act 1993 to be made good: see s 88; and CHARITIES vol 8 (2010) PARA 551. As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

2 See the Charities Act 1993 s 88; and CHARITIES vol 8 (2010) PARA 551. See also *Re Sir Robert Peel's School at Tamworth, ex p Charity Comrs* (1868) 3 Ch App 543; *Re Gilchrist Educational Trust* [1895] 1 Ch 367.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(5) BREACH OF UNDERTAKING/482. Breach of undertaking.

(5) BREACH OF UNDERTAKING

482. Breach of undertaking.

An undertaking given to the court in pending proceedings by a person or corporation (or by a government department or Minister of the Crown acting in his official capacity¹) on the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the court and a breach of the undertaking is misconduct amounting to contempt².

The court will not commit a defendant unless both the terms of the undertaking and the breach are clear beyond question³. Moreover, a person will not be held guilty of the breach of an undertaking unless he has proper notice of its terms⁴. Where the undertaking is of a negative character, personal service of the order containing the undertaking is unnecessary provided the party against whom enforcement is sought has notice of the undertaking⁵. It is unclear whether personal service is required where the undertaking is positive in character⁶.

Where an undertaking has been given on behalf of a company, the company will be guilty of contempt if, with knowledge of the terms of the undertaking, it fails to carry out its obligations contained in the undertaking⁷. A director or other officer of the company may also be punishable in contempt in respect of the company's breach of undertaking provided that he has proper notice of the terms of the undertaking⁸; but a director is only liable in his capacity as agent for the company and not in his capacity as shareholder⁹. Proceedings will only lie against a director or officer of the company if the company itself is liable for a breach of undertaking¹⁰.

As in the case of disobedience to an order of the court, breach of an undertaking is punishable by committal or by sequestration¹¹.

1 *Re M* [1994] 1 AC 377, sub nom *M v Home Office* [1980] 3 All ER 537, HL. See also para 464 ante.

2 See *Neath Canal Co v Ynisarwed Resolven Colliery Co* (1875) 10 Ch App 450; *Milburn v Newton Colliery Ltd* (1908) 52 Sol Jo 317; *Showerings Ltd v Fern Vale Brewery Co Ltd* [1958] RPC 462; *Dent v Dent and Hall* [1962] P 187, [1962] 1 All ER 746; *Biba Ltd v Stratford Investments Ltd* [1973] Ch 281, [1972] 3 All ER 1041; *Gandolfo v Gandolfo* [1981] QB 359, [1980] 1 All ER 833, CA; *Hussain v Hussain* [1986] Fam 134 at 139, [1986] 1 All ER 961 at 963, CA, per Sir John Donaldson MR; *Roberts v Roberts* [1990] FCR 837 at 839, CA, per Butler-Sloss LJ.

Although an undertaking is as binding and effective as an order of the court in the like terms, the procedural requirements for enforcement are not as strict in the case of an undertaking as in the case of an order: *Hussain v Hussain* supra at 139-140 and 963 per Sir John Donaldson MR. Nevertheless, where an undertaking is given in place of an injunction, as a matter of practice the undertaking should be recited in the preamble to the order of the court; and the order should be indorsed with a notice explaining the consequences of any breach of the undertaking and should be served on the person giving the undertaking: *Hussain v Hussain* supra at 140-141 and 964 per Sir John Donaldson MR, and at 142 and 965 per Neill LJ. See also CCR Ord 29 rr 1, 1A.

The court will not vary an undertaking given by a party to a suit, but may release a party from the undertaking if sufficient reason is shown: *Cutler v Wandsworth Stadium Ltd* [1945] 1 All ER 103, CA; *Roberts v Roberts* supra.

Instead of proceeding for contempt, it may be proper, in a doubtful case, to apply for an order requiring the defendant to state whether he has in fact complied with his undertaking: see *Kangol Industries Ltd v Alfred Bray & Sons Ltd* [1953] 1 All ER 444.

An undertaking to the court to pay money to another party does not confer any personal right or remedy on that party unless in the circumstances a contractual obligation is created: see *Re Hudson, Hudson v Hudson* [1966] Ch 209, [1966] 1 All ER 110. Cf *Gandolfo v Gandolfo* supra (undertaking by husband to pay son's school fees).

A plaintiff who tests the defendant's compliance with an undertaking is not debarred from relying upon any breach occasioned thereby: *Walt Disney Productions Ltd v Guvitz* [1982] FSR 446.

The court may take judicial notice of previous breaches by the same defendant of undertakings given to the court in similar cases, in order to determine the appropriate sanction to be imposed: *Mullen v Hackney London Borough Council* [1997] 2 All ER 906, [1997] 1 WLR 1103, CA.

As to breach of undertakings by solicitors see para 483 post.

3 *Redwing Ltd v Redwing Forest Products Ltd* (1947) 177 LT 387. Cf para 472 text and note 3 ante. See also para 465 ante.

As in the case of breach of a court order, a breach of undertaking may amount to contempt even though the breach is not wilful: *Re Agreement of Mileage Conference Group of Tyre Manufacturers' Conference Ltd* [1966] 2 All ER 849, [1966] 1 WLR 1137. See also *Steiner Products Ltd v Willy Steiner Ltd* [1966] 2 All ER 387, [1966] 1 WLR 986; *Re Rossminster Ltd* (1980) Times, 23 May, CA; *Miller v Scorey* [1996] 3 All ER 18 at 27, [1996] 1 WLR 1122 at 1132 per Rimer J. See further para 459 ante.

4 See para 458 note 3 ante. See also para 465 ante.

5 *D v A & Co* [1900] 1 Ch 484 at 487; *Re Launder, Launder v Richards* (1908) 98 LT 554; *Ronson Products Ltd v Ronson Furniture Ltd* [1966] Ch 603, [1966] 2 All ER 381; *Camden London Borough Council v Alpenoak Ltd* [1985] NLJ Rep 1209.

6 *Ronson Products Ltd v Ronson Furniture Ltd* [1966] Ch 603, [1966] 2 All ER 381. See also *Halford v Hardy* (1899) as reported in 44 Sol Jo 90 per Kekewich J (the passage drawing the distinction between positive and negative undertakings does not appear in other reports of the case: see 81 LT 721, [1899] WN 243). Cf *Gandolfo v Gandolfo* [1981] QB 359, [1980] 1 All ER 833, CA, in which no such distinction is drawn.

7 *Re Garage Equipment Association's Agreement* (1964) LR 4 RP 491. For these purposes, the act of any employee within the scope of his employment will be treated as the act of the company: see para 459 text and note 6 ante.

8 *Ronson Products Ltd v Ronson Furniture Ltd* [1966] Ch 603, [1966] 2 All ER 381; *Biba Ltd v Stratford Investments Ltd* [1973] Ch 281, [1972] 3 All ER 1041. Cf *A-G v Wheatley & Co Ltd* (1903) 48 Sol Jo 116. See also the text and note 4 supra.

9 See *Northern Counties Securities Ltd v Jackson & Steeple Ltd* [1974] 2 All ER 625 at 635-637.

10 *A-G v Wheatley & Co Ltd* (1903) 48 Sol Jo 116. See also *Benabo v William Jay & Partners Ltd* [1941] Ch 52, [1940] 4 All ER 196 (disobedience to court order); and para 458 note 10 ante.

11 See para 458 ante. Formerly an undertaking to pay money to a person or into court, like an order for payment, could only be enforced, subject to the provisions of the Debtors Act 1869 and the Debtors Act 1878 (see para 485 post), by process leading to imprisonment: see *Carter v Roberts* [1903] 2 Ch 312; *Buckley v Crawford* [1893] 1 QB 105; *Re Launder, Launder v Richards* (1908) 98 LT 554; *Cotton v Heyl* [1930] 1 Ch 510. An undertaking to do any act other than the payment of money or to abstain from doing anything was enforced by committal: *D v A & Co* [1900] 1 Ch 484; *Callow v Young* (1887) 56 LJ Ch 690.

UPDATE

482-483 Breach of Undertaking

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

482 Breach of undertaking

NOTE 1--See *Beggs v The Scottish Ministers* [2007] UKHL 3, [2007] 1 WLR 455.

NOTE 2--See also *Kensington Housing Trust v Oliver* (1997) 30 HLR 608, CA (the court has power to discharge an undertaking, including an undertaking incorporated in a consent order, at any stage, if it is just to do so); and *Mid Suffolk DC v Clarke* [2006] EWCA Civ 71, [2007] 1 WLR 980 (decision by judge to modify undertaking held to be inappropriate).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(5) BREACH OF UNDERTAKING/483. Breach of obligations by solicitors.

483. Breach of obligations by solicitors.

As officers of the court, solicitors are subject to a special jurisdiction¹. Thus the court² has power to commit a solicitor summarily for breach of an undertaking given by him in his capacity as an officer of the court³, even though the undertaking has not been given directly or indirectly to the court itself and is not an undertaking given in connection with any legal proceedings⁴. A solicitor is not liable to committal for breach of an undertaking given in his private capacity unless it is given to the court⁵. Only in very special circumstances will the court relieve a solicitor from his undertaking⁶.

The court has a discretion whether to enforce an undertaking⁷ and will only do so in a clear case where the undertaking is established beyond reasonable doubt⁸.

In the case of breach of an undertaking by a solicitor, the correct procedure is not to apply for committal immediately on breach but to obtain first a mandatory order, requiring performance of the undertaking and, on breach of the mandatory order, to apply for committal⁹.

A solicitor failing, in an Admiralty action in rem, to acknowledge issue or service of the writ in the action, or to put in bail or pay money into court in lieu of bail, in pursuance of his written undertaking, is liable to committal¹⁰.

¹ See *Re Grey* [1892] 2 QB 440, CA; *Silver and Drake v Baines* [1971] 1 QB 396, [1971] 1 All ER 473, CA. See also para 447 ante; and LEGAL PROFESSIONS vol 65 (2008) PARA 745.

² This includes the Court of Appeal, the High Court and the Crown Court, which together form the Supreme Court: see the Supreme Court Act 1981 s 1(1); and COURTS. A county court has the same power to enforce an undertaking given by a solicitor in relation to any proceedings in that court as the High Court has to enforce an undertaking so given in relation to any proceedings in the High Court: see the County Courts Act 1984 s 142; and COURTS.

³ The undertaking may be express or implied. An important instance of the latter is the implied undertaking in civil proceedings not to use a document for any purposes other than those of the proceedings in which it is disclosed: see *Harman v Secretary of State for the Home Department* [1983] 1 AC 280, sub nom *Home Office v Harman* [1982] 1 All ER 532, HL. See also *Watkins v AJ Wright (Electrical) Ltd* [1996] 3 All ER 31 (solicitor's ignorance of implied undertaking no defence to proceedings for committal for contempt of court). This undertaking ceases to apply to documents after they have been read to or by the court, or referred to in open court, unless the court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs: RSC Ord 24 r 14A. Documents disclosed on discovery may be used without leave for the purposes of an application by motion in the action to commit for breach of an order or undertaking: *Crest Homes plc v Marks* [1987] AC 829 at 860, [1987] 2 All ER 1074 at 1083, HL, per Lord Oliver. See also *Savings and Investment Bank Ltd v Gasco Investments (Netherlands) BV (No 2)* [1988] Ch 422 at 432, [1988] 1 All ER 975 at 983, CA, per Purchas LJ. As to the circumstances in which the undertaking will be released or modified by the court see *Crest Homes plc v Marks* supra (plaintiffs released from undertaking in order to enable them to bring proceedings for contempt in circumstances in which it was purely adventitious that there were two actions rather than one); *Garvin v Domus Publishing Ltd* [1989] Ch 335, [1989] 2 All ER 344. Cf *Miller v Scorey* [1996] 3 All ER 18, [1996] 1 WLR 1122 (use of documents in bringing second action without leave of the court and in breach of the implied undertaking was a contempt of court; the second action was struck out); *Cobra Golf Inc v Rata* [1998] Ch 109 at 166-169, [1997] 2 All ER 150 at 200-203 per Rimer J.

There is no implied undertaking in criminal proceedings restricting the use which may subsequently be made of documents disclosed in those proceedings: *Mahon v Rahn* [1998] QB 424, [1997] 3 All ER 687, CA.

⁴ *Re A Solicitor, ex p Hales* [1907] 2 KB 539; *Re FC* [1888] WN 77; *Re Coolgardie Goldfields Ltd, Re Cannon, Son and Morten (Solicitors)* [1900] 1 Ch 475 (undertaking to stamp a document); *Re Kerly, Son and Verden* [1901] 1 Ch 467, CA (undertaking to enter an appearance for a defendant in an action); *United Mining and Finance Corp Ltd v Becher* [1910] 2 KB 296 (undertaking to hold sum of money pending negotiations); *Re*

A Solicitor [1966] 3 All ER 52, [1966] 1 WLR 1604 (undertaking to hold client's lease to bank's order and to pay proceeds of sale to bank).

A solicitor must fulfil his undertaking notwithstanding instructions from his client not to do so: *Re Kerly, Son and Verden* [1901] 1 Ch 467, CA. See also *The Anna and Bertha* (1891) 64 LT 332. An undertaking may be enforced even though there is no personal fault on the part of the solicitor: see *Silver and Drake v Baines* [1971] 1 QB 396 at 402, [1971] 1 All ER 473 at 475, CA, per Lord Denning MR.

As to liability on undertakings given as a solicitor see LEGAL PROFESSIONS vol 65 (2008) PARA 749 et seq.

5 *Ex p Watts* (1832) 1 Dowl 512; *Ex p Evans* (1840) 9 Dowl 106; *Silver and Drake v Baines* [1971] 1 QB 396, [1971] 1 All ER 473, CA.

6 *Re Kerly, Son and Verden* [1901] 1 Ch 467, CA.

7 *United Mining and Finance Corp Ltd v Becher* [1910] 2 KB 296; *Silver and Drake v Baines* [1971] 1 QB 396 at 402, [1971] 1 All ER 473 at 475, CA, per Lord Denning MR. Thus, for example, the court has refused to enforce an undertaking where it was given in ignorance of facts known to the other party (*Wade v Simeon* (1845) 13 M & W 647) or by mistake (*Mullins v Howell* (1879) 11 ChD 763). See also *Re A Solicitor* [1966] 3 All ER 52, [1966] 1 WLR 1604; *Mould v Roberts* (1824) 4 Dow & Ry KB 719 (plaintiff's attorney agreed not to enforce the undertaking; attachment refused).

8 See *Silver and Drake v Baines* [1971] 1 QB 396, [1971] 1 All ER 473, CA.

9 *Re A Solicitor* [1966] 3 All ER 52, [1966] 1 WLR 1604; *Silver and Drake v Baines* [1971] 1 QB 396, [1971] 1 All ER 473, CA.

10 RSC Ord 75 r 9. See also *The Borre* [1921] P 390; *The Gertrud* (1927) 138 LT 239. Notice to enter an appearance should be given to the defendant's solicitor before applying to commit him for breach of his undertaking: *Jacob v Magnay* (1842) 12 LJQB 93. As to powers to commit a solicitor under rules of court see RSC Ord 24 r 16(4); Ord 26 r 6(4).

As to the law of contempt in relation to solicitors see further para 447 ante; and LEGAL PROFESSIONS vol 65 (2008) PARAS 747-748.

UPDATE

482-483 Breach of Undertaking

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

483 Breach of obligations by solicitors

NOTE 2--In Supreme Court Act 1981 s 1(1) (now Senior Courts Act 1981 s 1(1)) for 'Supreme Court' substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26 (in force 1 October 2009: SI 2009/1604).

NOTE 6--See also *Citadel Management Inc v Thompson* [1999] 1 FLR 21, CA (a solicitor cannot avoid an undertaking which has become impossible to perform, where he concealed from the court the fact that performance of the undertaking was reliant on the activities of others).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(6) DISOBEDIENCE TO ORDERS FOR THE PAYMENT OF MONEY/484. Order for payment of money.

(6) DISOBEDIENCE TO ORDERS FOR THE PAYMENT OF MONEY

484. Order for payment of money.

A judgment or order directing a person to pay money to another person¹ within a limited time can be enforced, subject to the Debtors Act 1869², by an order for committal or by a writ of sequestration³.

When the judgment is merely that the plaintiff 'do recover'⁴ against the defendant a sum of money, it cannot be enforced by committal or sequestration⁵, even if the debt is one in respect of which imprisonment for debt has not been abolished⁶.

1 As to non-compliance with an order to pay money into court see para 488 post.

2 See para 485 et seq post.

3 See RSC Ord 45 rr 1(1)(e), (f), (3), 5; and para 492 post. Where the remedies of committal or sequestration are available, the normal rules as to service of the order apply: see Ord 45 r 7; and para 467 ante.

4 Such an order does not specify a time limit: *Drewett v Edwards* (1877) 37 LT 622.

5 See RSC Ord 45 r 13(1). See also *Drewett v Edwards* (1877) 37 LT 622; *Hulbert and Crowe v Cathcart* [1894] 1 QB 244, DC; *Re Oddy, Major v Harness* [1906] 1 Ch 93, CA.

6 It is abolished by the Debtors Act 1869 s 4 (as amended): see para 485 post.

UPDATE

484-489 Disobedience to Orders for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(6) DISOBEDIENCE TO ORDERS FOR THE PAYMENT OF MONEY/485. Effect of Debtors Act 1869.

485. Effect of Debtors Act 1869.

The general object of the Debtors Act 1869 was to prevent the imprisonment of persons for the non-payment of ordinary judgment debts¹. Subject to certain exceptions², no person is to be arrested or imprisoned for making default in payment of a sum of money³.

The exceptions to this general rule are as follows: (1) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract; (2) default in payment of any sum recoverable summarily before a justice or justices of the peace; (3) default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court⁴ any sum in his possession or under his control; (4) default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in the payment of a sum of money when ordered to pay the same in his character as an officer of the court making the order⁵; (5) default in payment for the benefit of creditors of any portion of salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorised to make an order⁶; (6) default in payment of sums in respect of the payment of which orders are in the Debtors Act 1869 authorised to be made⁷.

The maximum period of imprisonment in any of the excepted cases is one year⁸ but in certain cases the court has a discretion to refuse committal⁹. The order of committal must accurately specify under which exception the default is included¹⁰. The imprisonment is a punishment for contempt and the suffering of imprisonment in no way discharges the debt¹¹.

1 See *Middleton v Chichester* (1871) 6 Ch App 152 at 156 per Lord Hatherley LC; *Bates v Bates* (1888) 14 PD 17 at 19, CA, per Cotton LJ. See also *Farrant v Farrant* [1957] P 188, [1957] 1 All ER 204; and *Report of the Committee on the Enforcement of Judgment Debts* (Cmnd 3909) (1969).

2 See heads (1)-(6) in the text; and para 486 post.

3 Debtors Act 1869 s 4 (amended by the Statute Law Revision (No 2) Act 1893). Though default in payment of a sum ordered to be paid cannot be punished by committal, the default remains a contempt and the court has a discretion whether or not to allow the party in default to take any further proceedings in the action in which payment was ordered: see *Leavis v Leavis* [1921] P 299; *Gower v Gower* [1938] P 106, [1938] 2 All ER 283. See also para 511 post.

4 The Debtors Act 1869 s 4 (as amended: see note 3 supra) refers to 'a court of equity', but the words 'the High Court of Justice' should now be read in substitution for the words 'a court of equity': *Marris v Ingram* (1879) 13 ChD 338. See also *Tinnuchi v Smart* (1885) 10 PD 184.

5 See *Re Dudley* (1883) 12 QBD 44, CA (default in payment of balance due under common order to tax and pay to client); *Jenkins v Fereday* (1872) LR 7 CP 358 (default in payment of costs of an action brought without authority); *Re A Solicitor* [1895] 2 Ch 66 (default in payment of debt and costs where solicitor ordered to pay sum of money with costs in his character as solicitor). See also *Re Rush, a Solicitor* (1870) LR 9 Eq 147; *Re White* (1870) 19 WR 39; *Tilney v Stansfeld* (1880) 28 WR 582; *Re N, a Solicitor* [1917] WN 138.

6 See *Marris v Ingram* (1879) 13 ChD 338 at 342 per Jessel MR.

7 See the Debtors Act 1869 s 4 (as amended: see note 3 supra). Section 4 (as so amended) now applies to sums of money payable and debts due to the Crown: see the Crown Proceedings Act 1947 s 26(2). For the purpose of the application of the Debtors Act 1869 s 4 (as so amended) to any sum of money payable or debt due to the Crown, that provision has effect as if the exceptions (see heads (1)-(6) in the text) included default in payment of any sum payable in respect of inheritance tax: see the Crown Proceedings Act 1947 s 26(2) proviso (amended by the Finance Act 1972 ss 54(8), 134, Sch 28 Pt II). The Crown Proceedings Act 1947 s 26(2) proviso (as so amended) refers to death duties, but these have been replaced with what is now known as inheritance tax: see INHERITANCE TAXATION vol 24 (Reissue) para 401 et seq. As to the Crown see para 487 post.

8 See the Debtors Act 1869 s 4 (as amended: see note 3 supra).

9 See the Debtors Act 1878 s 1. The cases in question are those within the exceptions in head (3) or head (4) in the text. Before the passing of the Debtors Act 1878, the court was bound to order imprisonment in those cases: *Marris v Ingram* (1879) 13 ChD 338 at 343. See also *Barlee v Barlee* (1822) 1 Add 301 at 304, 306.

A person ordered to pay money to another person will not be committed to prison for disobedience to that order without proof of ability to pay: *Buckley v Crawford* [1893] 1 QB 105. The Court of Appeal will not readily interfere with the conclusion of the court below as to the debtor's ability to pay: *Esdaile v Visser* (1880) 13 ChD 421, CA; but cf *Chard v Jervis* (1882) 9 QBD 178, CA. As to the means of a debtor to pay see *Nesom v Metcalfe* [1921] 1 KB 400, DC.

10 *Re Wilde* [1910] WN 128, CA.

11 See *Re Edgcombe, ex p Edgcombe* [1902] 2 KB 403 at 410, CA (in relation to the Debtors Act 1869 s 5 (as amended): see para 486 post).

UPDATE

484-489 Disobedience to Orders for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

485 Effect of Debtors Act 1869

NOTE 9--Debtors Act 1878 s 1 amended: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(6) DISOBEDIENCE TO ORDERS FOR THE PAYMENT OF MONEY/486. Committal for non-payment of judgment debts.

486. Committal for non-payment of judgment debts.

The High Court may commit to prison for a fixed term not exceeding six weeks, or until payment of the sum due, any person who makes default in the payment of a debt or instalment of a debt due from him under a High Court maintenance order¹.

A county court may similarly commit a person who makes default in the payment of a debt or instalment of a debt due from him under a High Court or county court maintenance order² or under a judgment or order, enforceable by a court in England and Wales, for the payment of any of certain taxes, contributions or liabilities³.

The imprisonment is a punishment for contempt and the suffering of imprisonment in no way discharges the debt⁴.

The provisions relating to appeal from an order or decision of a court in the exercise of jurisdiction to punish for contempt of court⁵ do not apply to a committal order made pursuant to these provisions⁶.

1 See the Debtors Act 1869 s 5 (amended by the Bankruptcy Act 1883 s 169(1), Sch 5); and the Administration of Justice Act 1970 s 11(a). The jurisdiction is confined to the Family Division: Family Proceedings Rules 1991, SI 1991/1247, rr 7.4-7.6. An order for committal under the Debtors Act 1869 s 5 (as amended) is, like an order under s 4 (as amended: see para 485 ante), of a penal nature: see *Mitchell v Simpson* (1889) 23 QBD 373 (affd (1890) 25 QBD 183, CA); *Bailey v Plant* [1901] 1 KB 31 at 33, CA; *Re Edgcombe, ex p Edgcombe* [1902] 2 KB 403 at 410, CA. The Debtors Act 1869 s 5 (as amended) now applies to sums of money payable and debts due to the Crown: see the Crown Proceedings Act 1947 s 26(2). As to the Crown see para 487 post.

2 An order for committal may be suspended by the High Court or county court on terms that the debtor pays to the judgment creditor the amount due either at a specified time or by instalments: see the Family Proceedings Rules 1991, SI 1991/1247, rr 7.4(10), 7.6(3); and CCR Ord 28 r 7.

3 See the Debtors Act 1869 s 5 (as amended: see note 1 supra); the Administration of Justice Act 1970 s 11(b); and CIVIL PROCEDURE vol 12 (2009) PARA 1515. The relevant taxes etc include income tax or any other tax or liability recoverable under the Taxes Management Act 1970 s 65, s 66 or s 68 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) para 1814 et seq); contributions equivalent premiums under the Pension Schemes Act 1993 Pt III (ss 7-68) (as amended) (see SOCIAL SECURITY AND PENSIONS); and Class 1, 2 and 4 contributions under the Social Security Contributions and Benefits Act 1992 Pt I (ss 1-19) (as amended) (see SOCIAL SECURITY AND PENSIONS): see the Administration of Justice Act 1970 s 11(b), Sch 4 (amended by the Social Security Act 1973 s 100, Sch 28 Pt I; the Social Security Pensions Act 1975 s 65(1), Sch 4 para 13; the Social Security (Consequential Provisions) Act 1975 ss 1(3), 5, Sch 2 para 40; the Statute Law (Repeals) Act 1989 s 1, Sch 1 Pt I; the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 6; and the Pensions Act 1995 s 151, Sch 5 para 2); and COURTS.

The jurisdiction to commit under the Debtors Act 1869 s 5 (as amended) is exercisable only where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default and has refused or neglected, or refuses or neglects, to pay the same: see s 5 (as so amended). Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath: see s 5 (as so amended). See also para 485 note 9 ante.

The High Court and county court have the power, when dealing with an application under s 5 (as so amended) for an order of committal, to make an attachment of earnings order instead: see the Attachment of Earnings Act

1971 s 3 (as amended). As to attachment of earnings orders see CIVIL PROCEDURE vol 12 (2009) PARA 1431 et seq; MAGISTRATES vol 29(2) (Reissue) PARA 837 et seq; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 627 et seq.

As to the enforcement of orders by magistrates' courts see para 489 post.

4 *Re Edgcombe, ex p Edgcombe* [1902] 2 KB 403, CA.

5 See the Administration of Justice Act 1960 s 13 (as amended); and paras 512-517 post.

6 See *ibid* s 13(5) (as amended); and para 512 note 4 post.

UPDATE

484-489 Disobedience to Orders for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

486 Committal for non-payment of judgment debts

NOTES 1-3--Proceedings under the 1869 Act are criminal proceedings for the purpose of the European Convention on Human Rights so that the respondent is entitled to a fair trial: *Murbarak v Murbarak* [2001] 1 FCR 193, CA.

NOTE 3--For 'Proof of the means ... examined on oath' read 'Proof of the means of the person making default may be given in such manner as the court thinks just': 1869 Act s 5 (amended by the Civil Procedure (Modification of Enactments) Order 2002, SI 2002/439, Statute Law (Repeals) Act 2004). For the purpose of considering whether to commit a debtor to prison under the 1869 Act s 5, the debtor may be summoned in accordance with the prescribed rules: s 5 (as so amended).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(6) DISOBEDIENCE TO ORDERS FOR THE PAYMENT OF MONEY/487. The Crown.

487. The Crown.

An order made in favour of the Crown against any person in civil proceedings to which the Crown is a party is enforced in the same manner as an order made in an action between subjects¹. A debtor to the Crown is liable to imprisonment for non-payment of inheritance tax², but otherwise enjoys the same protection from imprisonment as an ordinary debtor³. Attachment and committal do not lie to enforce orders for the payment of money or costs against the Crown or a government department or an officer of the Crown as such⁴.

1 See the Crown Proceedings Act 1947 s 26(1) (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1239. See also CROWN PROCEEDINGS AND CROWN PRACTICE.

2 See *ibid* s 26(2) proviso (as amended); and para 485 note 7 ante. As to inheritance tax see INHERITANCE TAXATION.

3 *Ie* under the Debtors Act 1869 s 4 (as amended): see para 485 ante.

4 See the Crown Proceedings Act 1947 s 25(4); RSC Ord 77 r 15; and para 464 ante. As to the method by which orders made against the Crown are satisfied see CIVIL PROCEDURE vol 12 (2009) PARA 1239. As to proceedings leading to such orders see CROWN PROCEEDINGS AND CROWN PRACTICE.

UPDATE

484-489 Disobedience to Orders for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(6) DISOBEDIENCE TO ORDERS FOR THE PAYMENT OF MONEY/488. Order for the payment of money into court.

488. Order for the payment of money into court.

A judgment or order for the payment of money into court within a specified time may be enforced by an order of committal or by sequestration¹. However an order for payment of money into court differs from an order for payment of money to a person in that it does not necessarily imply the existence of a debt and is thus not invariably subject to the restrictions of the Debtors Act 1869².

The effect of the authorities appears to be: (1) that an order for payment into court where the payment is for security, rather than in respect of a debt, is not affected by the Debtors Act 1869 and may be enforced by committal or sequestration³; (2) that an order for payment into court when the payment is in respect of a debt is governed by the Debtors Act 1869 and cannot be enforced by committal unless the payment is within one of the specified exceptions⁴.

1 See RSC Ord 45 rr 1(2)(b), (c), 5(1); and para 492 post. As to committal see paras 493, 502, 506 post; and as to sequestration see paras 495, 507 post.

2 See the Debtors Act 1869 s 4 (as amended); and para 485 ante.

3 See eg *Lynch v Lynch* (1885) 10 PD 183, approved in *Bates v Bates* (1888) 14 PD 17, CA; *Shine v Shine* [1893] P 289; *Jones v Jones* [1912] P 295, not following *Clarke v Clarke* [1891] P 278. See also *Hutchinson v Hartmont* [1877] WN 29; *Re Greer, Napper v Fanshawe* [1895] 2 Ch 217 at 220; *Lady De la Pole v Dick* (1885) 29 ChD 351, CA (payment in ordered for security or safety of a fund).

Where committal does lie, the normal requirements as to the fixing of time for payment (see para 466 ante) and the serving of notice of the order for payment (see para 467 ante) must be satisfied before committal will be ordered.

4 See eg *Bates v Bates* (1888) 14 PD 17, CA (direction to pay taxed costs); *De Lossy v De Lossy* (1890) 15 PD 115 (order for maintenance); *Farrant v Farrant* [1957] P 188, [1957] 1 All ER 204 (order to pay a sum certain after it has been ascertained). As to the specified exceptions see para 485 ante.

UPDATE

484-489 Disobedience to Orders for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(6) DISOBEDIENCE TO ORDERS FOR THE PAYMENT OF MONEY/489. Disobedience to orders of magistrates' court.

489. Disobedience to orders of magistrates' court.

A magistrates' court has the power to issue a warrant to commit a person to prison for default in paying a sum adjudged to be paid by a conviction or order of the court¹. In so far as a civil debt² is concerned the power to commit is exercisable only in the case of default under a magistrates' court's maintenance order³ or under an order for contribution by a legally assisted person to the cost of his defence in a criminal case⁴, or an order for the payment of specified taxes, contributions, premiums or liabilities⁵.

1 See the Magistrates' Courts Act 1980 s 76(1) (as amended); and MAGISTRATES. There is a sliding scale of maximum periods of imprisonment, ranging from seven days for failure to pay an amount not exceeding £200 to 12 months for failure to pay an amount exceeding £10,000: see s 76 (as amended), Sch 4 para 1 (as amended); and MAGISTRATES vol 29(2) (Reissue) PARA 865. As to the detention of a person aged 18 or over but less than 21 see the Magistrates' Courts Act 1980 s 96A (as added and amended); the Criminal Justice Act 1982 s 9 (as amended); MAGISTRATES.

If the evidence before the justices reveals that there is a reasonable likelihood that the defaulter has assets available to satisfy the sum he owes, they should proceed by way of a warrant of distress rather than by way of a warrant committing the defaulter to prison: *R v Birmingham Justices, ex p Bennett* [1983] 1 WLR 114 at 118, DC, per Griffiths LJ.

2 The power of a magistrates' court to issue a warrant of committal in respect of non-payment of a sum adjudged to be paid by a conviction is unaffected: see the Magistrates' Courts Act 1980 s 92(2); and MAGISTRATES.

A magistrates' court must not commit any person to prison or other detention in default of payment of a sum enforceable as a civil debt or for want of sufficient distress to satisfy such a sum except by an order made on complaint and on proof to the satisfaction of the court that the person has, or has had since the date on which the sum was adjudged to be paid, the means to pay the sum or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected to pay it: see s 96(1); and MAGISTRATES. The maximum period for which a person may be committed in default of payment of a sum of any amount enforceable as a civil debt is six weeks: Sch 4 para 3.

3 See *ibid* s 92(1)(a); and MAGISTRATES. As to a magistrates' court maintenance order see MAGISTRATES.

4 See *ibid* s 92(1)(b) (as substituted); and MAGISTRATES. As to such an order for contribution see the Legal Aid Act 1988 s 23.

5 See the Magistrates' Courts Act 1980 s 92(1)(c); and MAGISTRATES. As to the specified taxes, contributions, premiums and liabilities see the Administration of Justice Act 1970 s 11, Sch 4 (as amended); para 486 note 3 ante; and MAGISTRATES.

UPDATE

484-489 Disobedience to Orders for the Payment of Money

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

489 Disobedience to orders of magistrates' court

TEXT AND NOTE 4--For 'an order for contribution by a legally assisted person to' read 'an order under the Access to Justice Act 1999 s 17(2) (see LEGAL AID vol 65 (2008) PARA 174) for payment by an individual in respect of': Magistrates' Courts Act 1980 s 92(1) (b) (amended by the Access to Justice Act 1999 Sch 4 para 17).

NOTE 4--Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/3. CIVIL CONTEMPT/(7) AIDING AND ABETTING/490. Aiding and abetting breach of order.

(7) AIDING AND ABETTING

490. Aiding and abetting breach of order.

A stranger to an action who aids and abets the breach of a court order¹ obstructs the course of justice, and is guilty of contempt punishable by committal². The punishment is inflicted, not for a technical infringement of the order, but for impeding or interfering with the administration of justice by aiding and abetting others in setting the court at defiance³.

It is a contempt to indemnify a person against the consequences of committing contempt⁴.

1 Aiding and abetting the breach of an undertaking given to the court may also amount to a contempt: see *Elliot v Klinger* [1967] 3 All ER 141, [1967] 1 WLR 1165; *Thorne RDC v Bunting (No 2)* [1972] 3 All ER 657 (affd [1972] 3 All ER 1084, CA). As to breach of undertakings see paras 482-483 ante.

2 *Seaward v Paterson* [1897] 1 Ch 545, CA. In order to establish that a party aided and abetted the breach of a court order it appears to be necessary to show active assistance in the breach or, at least, willing acquiescence: see *Seaward v Paterson* supra. The aider and abettor must have knowledge of the terms of the order, but it is unnecessary to show actual service of a prohibitory order: see *Seaward v Paterson* supra. But quare in the case of a mandatory order: see para 467 ante.

3 *Seaward v Paterson* [1897] 1 Ch 545, CA, per judgment of Lindley LJ; *A-G v Times Newspapers Ltd* [1992] 1 AC 191, [1991] 2 All ER 398, HL. See also *Lower v Crudge* (1580) Cary 101; *Harvey v Harvey* (1681) 2 Cas in Ch 82; *Lewes v Morgan* (1818) 5 Price 518; *Lord Wellesley v Earl of Mornington* (1848) 11 Beav 181; *Avery v Andrews* (1882) 51 LJ Ch 414; *Smith-Barry v Dawson* (1891) 27 LR Ir 558; *Z Ltd v A-Z and AA-LL* [1982] QB 558, sub nom *Z Ltd v A* [1982] 1 All ER 556, CA.

Although the jurisdiction of the court to enforce its orders against aiders and abettors in disobedience is not questioned, their contempt should not, it seems, be regarded as criminal contempt: see *Scott v Scott* [1913] AC 417 at 458, HL, per Lord Atkinson; but cf *Seaward v Paterson* supra at 555 per Lindley J; *A-G v Times Newspapers Ltd* supra at 203 and 402 per Lord Brandon, at 211, 214-215 and 409, 412 per Lord Ackner, and at 217-218, 220 and 415-416, 417 per Lord Oliver.

4 *Ex p Dixon* (1803) 8 Ves 104.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(i) In general/491. Punishment of criminal contempt.

4. PROCEDURE AND POWERS OF COURT

(1) POWERS OF COURT

(i) In general

491. Punishment of criminal contempt.

Criminal contempt is an offence triable summarily, without a jury¹. The alternative process of trying criminal contempts on indictment was rarely employed and has now fallen into disuse².

The superior courts have an inherent jurisdiction to punish criminal contempt by the summary process of committal³. The power to commit by summary process, being arbitrary and unlimited, is to be exercised with the greatest caution⁴.

The offence of criminal contempt⁵ is punishable by imprisonment for a term not exceeding two years⁶, or by a fine⁷, or by an order to give security for good behaviour⁸. The court sometimes adopts the more lenient course of granting an injunction against a repetition of the act of contempt⁹.

1 The origin of the summary jurisdiction in the common law courts is obscure but seems to have been founded upon the contempt implied in disregarding the royal writ: see 4 Bl Com (14th Edn) 122; *R v Almon* (1765) Wilm 243 at 254 ('the mode of proceeding by attachment stands upon the same foundation and basis as trials by jury do - immemorial usage and practice'); judgment of Fletcher J in *Taaffe v Downes* (decided in the Irish Court of Common Pleas in 1813) at 118-120 of the full report by John Hatchell referred to in 3 Moo PCC 36n. The Court of Chancery seems to have exercised the jurisdiction by virtue of the prerogative delegated to the Chancellor (1 Spence's Equitable Jurisdiction of the Court of Chancery (1846 Edn) p 354). See generally Fox *The History of Contempt of Court* (1927 Edn).

2 See *R v Parke* [1903] 2 KB 432 at 442 per Wills J. See also *Morris v Crown Office* [1970] 2 QB 114 at 123-124, [1970] 1 All ER 1079 at 1082, CA, per Lord Denning MR; *R v Harbax Singh* [1979] QB 319 at 325, [1979] 1 All ER 524 at 527, CA, per Roskill LJ. The procedure of an indictment was, it seems, last used in *R v Tibbits and Windust* [1902] 1 KB 77, CCR. It has been said that procedure by indictment could be revived (see *Re A-G's Application, A-G v Butterworth* [1963] 1 QB 696 at 728, [1962] 3 All ER 326 at 334, CA, per Pearson LJ), but the House of Lords has now indicated that it should not be revived (see *Re Lonrho plc* [1990] 2 AC 154 at 177, [1989] 2 All ER 1100 at 1105-1106, HL, per Lord Keith of Kinkel). See also para 492 note 1 post.

The alternative of trying contempts by means of a criminal information in the Queen's Bench Division (as to which see *R v Parke* supra at 442; *R v Davies* [1906] 1 KB 32 at 41) is no longer possible, since criminal informations have been abolished: see the Criminal Law Act 1967 s 6(6).

3 As to committal see paras 493, 502 post. Formerly the High Court or Court of Appeal could proceed summarily in cases of criminal contempt by the processes of attachment or committal. As to the distinction between these two forms of summary process see *R v Lambeth County Court Judge and Jonas* (1887) 36 WR 475; Oswald on Contempt (3rd Edn) pp 23-32.

The remedy of attachment has not been formally abolished (see eg the reference to attachment in the Administration of Justice Act 1960 s 13(2) (as amended); and para 512 post), but it is now obsolete and the current rules of court do not refer to the remedy of attachment. Under the current rules of court, all cases of criminal contempt are punishable by committal: see RSC Ord 52 r 1(1). See also *Balogh v St Albans Crown Court* [1975] QB 73 at 88, [1974] 3 All ER 283 at 291, CA, per Stephenson LJ.

Attachment was applicable to all cases of civil contempt except breaches of undertakings (*D v A & Co* [1900] 1 Ch 484) and failure by a sheriff to return a writ of attachment or bring in the body after notice. In the excepted cases committal was applicable. Committal was alternative to attachment in all cases of criminal contempt (*Mr Registrar Lavie's Memorandum* [1893] 1 Ch 259n) and for the purpose of enforcing judgments and orders to do an act other than the payment of money or to abstain from doing anything (see *Harvey v Harvey* (1884) 26 ChD 644; *D v A & Co* [1900] 1 Ch 484). Attachment, and not committal, was (subject to the Debtors Acts 1869 and 1878: see para 485 ante) the proper procedure to enforce an order for the payment of money: *Re Ward's Estate, Wallis v Ward* [1871] WN 163. Attachment is not available as a means of enforcing orders for the payment of money or costs against the Crown or a government department or an officer of the Crown as such: see the Crown Proceedings Act 1947 s 25(4); and paras 464, 487 ante.

4 *Re Clements and the Republic of Costa Rica v Erlanger* (1877) 46 LJ Ch 375 at 383, CA; *R v Davies* [1906] 1 KB 32 at 41; *R v Castro, Skipworth's Case* (1873) LR 9 QB 230 at 241. See also *Powis v Hunter* (1832) 2 LJ Ch 31 at 32; *Parashuram Detaram Shamdasani v R* [1945] AC 264, PC; *Izuora v R* [1953] AC 327, [1953] 1 All ER

827, PC. Where a remedy by civil action is available, and no interference with the course of justice is involved, the court will refuse to commit, leaving the party to his ordinary legal remedy: *Birch v Walsh* (1846) 10 I Eq R 93. 'Recourse ought not to be had to process of contempt in aid of a civil remedy where there is any other method of doing justice': *Re Davies* (1888) 21 QBD 236 at 239 per Mathew J.

5 It is yet to be decided whether an attempt to commit a contempt is punishable as such: compare the judgments of Lord Denning MR and Stephenson LJ in *Balogh v St Albans Crown Court* [1975] QB 73, [1974] 3 All ER 283, CA (in this case, the preparatory steps taken by the appellant to introduce nitrous oxide (laughing gas) into the court were held to be inadequate, in any event, to amount to a punishable attempt). As to criminal attempts generally see the Criminal Attempts Act 1981; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 79-83.

6 See the Contempt of Court Act 1981 s 14(1); and para 502 post. See also 1 Hawk PC (8th Edn) c 6; 4 BI Com 124-126.

7 As to fines see para 504 post. As to the power to fine see 2 Hawk PC (8th Edn) c 1 s 15; 4 BI Com 379-380.

8 As to security for good behaviour see para 504 post. See also 1 Hawk PC (8th Edn) c 28; 4 BI Com 251-252.

9 See para 505 post.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

491 Punishment of criminal contempt

NOTE 6--See *R v Lewis* (1999) Times, 4 November, CA (term of one week's imprisonment held to be excessive punishment following a disturbance in the public gallery upon the pronouncement of a sentence for an accused).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(i) In general/492. Punishment of civil contempt.

492. Punishment of civil contempt.

Civil contempt of court¹ is punishable by way of committal² or by way of sequestration³. The effect of a writ of sequestration is to place, for a temporary period, the property of the contemnor into the hands of sequestrators, who manage the property and receive the rents and profits⁴.

Civil contempt may also be punished by a fine⁵, or an injunction may be granted against the contemnor⁶.

1 Civil contempt of court may be tried summarily either before the judge dealing with the case or on motion before a Divisional Court of the Queen's Bench Division: *Linnett v Coles* [1987] QB 555 at 561, [1986] 3 All ER 652 at 656, CA, per Lawton LJ. It has been stated that civil contempt of court is a common law misdemeanour which may in principle be tried on indictment, although it never is: see *Linnett v Coles* supra at 561 and 656 per Lawton LJ; cf para 404 note 6 ante. See also para 491 text and note 2 ante.

2 See paras 493, 506 post.

3 See RSC Ord 45 r 5. The remedies of committal and sequestration under Ord 45 r 5 are cumulative and not alternative: see *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* [1964] Ch 195 at 202, [1963] 3 All ER 493 at 498 per Cross J, considering *Iberian Trust Ltd v Founders' Trust and Investment Co Ltd* [1932] 2 KB 87. In practice, the remedies are only sought together when it is desired to enforce an order made against a company by committing its officers and sequestering the company's property: see further CIVIL PROCEDURE vol 12 (2009) PARAS 1249, 1269, 1380 et seq, 1514 et seq; COMPANIES vol 14 (2009) PARA 310. As to sequestration see paras 495, 499, 507 post.

4 It is not necessary for the party applying for the writ to show that there is property which can be seized under a sequestration: *Hulbert and Crowe v Cathcart* [1896] AC 470, HL.

5 See eg *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* [1964] Ch 195, [1963] 3 All ER 493. As to fines see para 508 post.

6 See para 509 post.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(ii) Procedure/493. Committal.

(ii) Procedure

493. Committal.

The procedure by way of committal for contempt is governed by rules of court¹. Except in cases of contempt of the Court of Appeal², where contempt of court (1) is committed in connection with (a) any proceedings before a Divisional Court of the Queen's Bench Division³; or (b) criminal proceedings⁴, except where the contempt is committed in the face of the court⁵ or consists of disobedience to an order of the court or a breach of an undertaking to the court⁶; or (c) proceedings in an inferior court⁷; or (2) is committed otherwise than in connection with any proceedings⁸, an order of committal may, subject to certain exceptions⁹, be made only by a Divisional Court of the Queen's Bench Division¹⁰.

A single judge of the Queen's Bench Division may make an order of committal (i) where contempt of court is committed in connection with any civil proceedings in the High Court, except when the proceedings were assigned or subsequently transferred to some other division in which case the order may be made only by a single judge of that other division¹¹; (ii) where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of court¹².

1 See RSC Ord 52. As to the power to punish contempts committed in the face of inferior courts see paras 406, 454 ante.

The jurisdiction to strike out proceedings as an abuse of process on the grounds of prejudice resulting from inordinate and inexcusable delay may be exercised in respect of proceedings for contempt of court: *Taylor v Ribby Hall Leisure Ltd* [1997] 4 All ER 760, [1998] 1 WLR 400, CA.

2 The power of the Court of Appeal to commit for contempt of that court is expressly preserved: see RSC Ord 52 r 1(1). It seems that the Court of Appeal (Civil Division) may hear the application even if the contempt is a contempt of the Criminal Division: see *R v Metropolitan Police Comr, ex p Blackburn (No 2)* [1968] 2 QB 150, [1968] 2 All ER 319, CA.

3 Eg disobedience to a writ of habeas corpus, or to an order of mandamus (*R v Poplar Metropolitan Borough Council, ex p Metropolitan Asylums Board (No 2)* [1922] 1 KB 95, CA), prohibition or certiorari (*Munee v Wheatley* (1851) 6 Exch 88). As to prerogative writs and orders see para 475 ante; and JUDICIAL REVIEW vol 61 (2010) PARA 602.

4 RSC Ord 52 r 1(2). See also *DPP v Channel Four Television Co Ltd* [1993] 2 All ER 517, DC.

5 As to contempt in the face of the court see paras 406 et seq ante, 494 post.

6 Cases of contempt falling within either of these exceptions may be dealt with by either the Crown Court or a Divisional Court of the Queen's Bench Division: see *DPP v Channel Four Television Co Ltd* [1993] 2 All ER 517, DC. As to the circumstances in which the power should be exercised by the Divisional Court rather than the Crown Court see *Balogh v St Albans Crown Court* [1975] QB 73, [1974] 3 All ER 283, CA; *Rooney v Snaresbrook Crown Court* (1978) 68 Cr App Rep 78, CA; *A-G v Mantoura* [1993] COD 4, [1993] Crim LR 279; *DPP v Channel Four Television Co Ltd* supra.

The Crown Court has the like powers, rights, privileges and authority as the High Court: see the Supreme Court Act 1981 s 45(4); and COURTS. The power of the High Court to make an order of committal of its own motion against a person guilty of contempt is expressly preserved: see RSC Ord 52 r 5.

7 See *R v Davies* [1906] 1 KB 32. As to the meaning of 'inferior court' see para 454 note 1 ante. As to contempt in relation to inferior courts see para 454 ante.

The jurisdiction of the Divisional Court is not restricted to the punishment of contempt likely to prejudice proceedings in the inferior court but includes, for instance, the punishment of acts obstructing process issued by order of an inferior court: *R v Edwards, ex p Welsh Church Temporalities Comrs* (1933) 49 TLR 383, DC. Where an inferior court is scandalised, the appropriate procedure is by committal under RSC Ord 52: *R v Bairstow, ex p DPP* [1941] WN 104.

8 Eg contempt by scandalising a court. As to scandalising the court see para 433 ante.

9 As to the exceptions see RSC Ord 52 r 1(4); and the text and notes 11-12 infra.

10 RSC Ord 52 r 1(2). See also note 6 supra.

11 See eg *Vine Products Ltd v Green* [1966] Ch 484, [1965] 3 All ER 58; *Re B (JA) (an infant)* [1965] Ch 1112, [1965] 2 All ER 168.

Where the judge or judges, in relation to proceedings in any court, are deemed by virtue of any enactment to constitute a court of the High Court, the reference in the text to a single judge must be construed as a reference to a judge of that court: RSC Ord 52 r 1(3).

12 RSC Ord 52 r 1(3), (4). As to contempt of tribunals see the Tribunals of Inquiry (Evidence) Act 1921 s 1(2); *A-G v Clough* [1963] 1 QB 773, [1963] 1 All ER 420; *A-G v Mulholland, A-G v Foster* [1963] 2 QB 477, [1963] 1 All ER 767, CA; and paras 455-456 ante. As to contempt of courts-martial see para 457 ante.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

493 Committal

NOTE 6--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

NOTE 9--See *R v M* [2008] EWCA Crim 1901, [2009] 1 WLR 1179 (no reason why Crown Court judge could not try a breach of restraint order).

NOTE 12--1921 Act repealed: Inquiries Act 2005 s 49, Sch 3.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(ii) Procedure/494. Contempt in the face of the court.

494. Contempt in the face of the court.

In the case of contempt in the face of the court¹ the offender may be committed at once, and no notice or formal institution of proceedings is necessary². The contempt must be stated distinctly, and an opportunity of answering given³. Any branch of the High Court and each division of the Court of Appeal has jurisdiction to punish contempts in its face⁴. The Divisional Court of the Queen's Bench Division has jurisdiction to punish contempt committed in the face of inferior courts in pursuance of its inherent supervisory jurisdiction⁵. A single judge of the Queen's Bench Division may punish a contempt committed in the face of a tribunal established under the Tribunals of Inquiries (Evidence) Act 1921⁶.

1 As to contempt in the face of the court see para 406 et seq ante.

2 *Watt v Ligertwood* (1874) LR 2 Sc & Div 361, HL. The power of the High Court or the Court of Appeal to commit for contempt of its own motion is expressly preserved: see RSC Ord 52 r 5. Although the power of the court to commit of its own motion is not expressly confined to contempts committed in the face of the court, the power conferred by Ord 52 r 5 should only be exercised when it is urgent and imperative to act immediately: *Balogh v St Albans Crown Court* [1975] QB 73, [1974] 3 All ER 283, CA; *Rooney v Snaresbrook Crown Court* (1978) 68 Cr App Rep 78, CA; *DPP v Channel Four Television Co Ltd* [1993] 2 All ER 517, DC; *R v Bromell* (1995) Times, 9 February, CA; and see para 406 note 1 ante. The alternative process of trying criminal contempts on indictment was rarely used and has now fallen into disuse: see para 491 text and note 2 ante.

3 *Re Pollard* (1868) LR 2 PC 106; *Chang Hang Kiu v Piggott, Re Lai Hing Firm* [1909] AC 312, PC. See also *Appuhamy v R* [1963] AC 474, [1963] 1 All ER 762, PC; *Morris v Crown Office* [1970] 2 QB 114, [1970] 1 All ER 1079, CA.

4 See para 493 ante. The Crown Court also has power to punish of its own motion contempts committed in its face: see the Supreme Court Act 1981 s 45(4); and para 493 note 6. As to the powers of a county court see the County Courts Act 1984 s 118 (as amended); para 454 ante; and COURTS. As to the powers of a magistrates' court see the Contempt of Court Act 1981 s 12 (as amended); para 454 ante; and MAGISTRATES.

5 RSC Ord 52 r 1(2)(a)(iii). See also paras 454, 493 ante.

6 RSC Ord 52 r 1(4). See paras 455, 493 ante.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

494 Contempt in the face of the court

NOTE 2--See also *R v MacLeod* (2000) Times, 20 December, CA; *R v Santiago* [2005] EWCA Crim 556, [2005] 2 Cr App Rep 366.

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(ii) Procedure/495. Sequestration.

495. Sequestration.

The writ of sequestration¹, though in its nature a process for dealing with contempt², is a form of civil execution and is not applicable to criminal contempt³. A writ of sequestration may only issue with the leave of the court⁴. Application for leave to issue a writ of sequestration is by motion and is made in the division in which the judgment or order was obtained⁵.

1 As to the effect of a writ of sequestration see para 492 ante. See also para 507 post.

2 *Pratt v Inman* (1889) 43 ChD 175 at 179. On an application for sequestration the question for the court is whether a contempt has been committed, and the court has no jurisdiction otherwise to declare the rights of the parties inter se as regards any of the facts alleged in the application: *Meters Ltd v Metropolitan Gas Meters Ltd* (1907) 51 Sol Jo 499.

3 As to punishment of criminal contempt see para 491 ante. As to civil contempt see para 492 ante.

4 RSC Ord 45 r 5(1)(b)(i), (ii).

5 RSC Ord 46 r 5(1). As to application for a writ of sequestration see further para 499 post. See also para 507 post.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(ii) Procedure/496. Application to Queen's Bench Divisional Court.

496. Application to Queen's Bench Divisional Court.

No application to a Divisional Court for an order of committal may be made unless leave to make such an application has been granted¹. Application for such leave must be made ex parte to a Divisional Court, except in vacation when application may be made to a judge in chambers². The application must be supported by a statement setting out the name and description of the applicant; the name, description and address of the person sought to be

committed; and the grounds on which the committal is sought³. The facts relied on must be supported by an affidavit, to be filed before the application is made⁴. The applicant must give notice of the application for leave not later than the preceding day to the Crown Office and at the same time lodge in that office copies of the statement and affidavit⁵.

Where an application for leave is refused by a judge in chambers, the applicant may make a fresh application for leave to a Divisional Court within eight days of the judge's refusal or, if the Divisional Court does not sit within that period, on the first day on which the court sits thereafter⁶.

Where leave has been granted to apply for an order of committal, the application for the order must be made by motion to a Divisional Court⁷. Unless the court or judge granting leave has otherwise directed, there must be at least eight clear days between the service of the notice of motion and the day named therein for the hearing⁸.

The notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave, must be served personally on the person sought to be committed⁹. However, the court or judge may order substituted service¹⁰, or may dispense with service of the notice of motion if it or he thinks it just to do so¹¹.

1 RSC Ord 52 r 2(1).

2 RSC Ord 52 r 2(2). Although at one time a litigant in person could not make a motion to the Divisional Court, it would now seem that a litigant in person will be heard and may move the court both in the application for leave and in the motion to commit: see *Practice Note* [1947] WN 218, DC. See also *De Vries v Kay* (1978) Times, 7 October (judge of the Queen's Bench Division heard applicant in person on an application for committal). Cf para 497 note 1 post.

3 RSC Ord 52 r 2(2).

4 RSC Ord 52 r 2(2).

5 RSC Ord 52 r 2(3).

6 RSC Ord 52 r 2(4), (5).

7 See RSC Ord 52 r 3. Proceedings which require to be immediately or promptly heard may, in vacation, be brought before a single judge: see RSC Ord 64 r 4(a).

8 RSC Ord 52 r 3(1). The leave lapses unless the motion is entered for hearing within 14 days after leave is granted: RSC Ord 52 r 3(2).

9 RSC Ord 52 r 3(3). See also *Ellerton v Thirsk* (1820) 1 Jac & W 376; *Nelson v Worssam* [1890] WN 216; *Mander v Falcke* [1891] 3 Ch 488. The necessity for personal service can be waived: see *Ex p Alcock* (1875) 1 CPD 68; but cf *Mander v Falcke* supra. Personal service of the notice of motion involves leaving a copy with the person to be served: RSC Ord 65 r 2.

The leave of the court is required, and may be granted, to serve a notice of motion outside the jurisdiction in proceedings in which leave is required under RSC Ord 11 r 1(1) (see CIVIL PROCEDURE) to serve the writ or other originating process outside the jurisdiction: *Mansour v Mansour* [1989] 1 FLR 418 at 420-421, CA, per Lord Donaldson MR. See also para 497 note 5 post.

Where a hearing to commit for contempt of court is adjourned to a date to be notified (as opposed to a date notified to the respondent in court) the new date must generally also be notified by personal service: *Chiltern DC v Keane* [1985] 2 All ER 118 at 120, [1985] 1 WLR 619 at 622-623, CA, per Sir John Donaldson MR. But cf *Bhimji v Chatwani* [1991] 1 WLR 989 at 994 per Scott J; *Tabone v Seguna* [1986] 1 FLR 591, CA (county court).

Where the order is to be enforced against a group, the fullest notice of the application must be given to each member of the group; the notice must be served on each member together with the accompanying affidavit and each individual name must be included in the motion: *R v Poplar Metropolitan Borough Council, ex p Metropolitan Asylums Board (No 2)* [1922] 1 KB 95, CA. However, irregularities in the form or service of the notice of motion or accompanying affidavit may be waived: *R v Poplar Metropolitan Borough Council, ex p Metropolitan Asylums Board (No 2)* supra.

10 RSC Ord 65 r 4. See also *Re A Solicitor* (1916) 60 Sol Jo 708; *Re A Solicitor* [1892] WN 22; *Mander v Falcke* [1891] 3 Ch 488. Cf para 497 note 6 post. As to substituted service see CIVIL PROCEDURE.

11 RSC Ord 52 r 3(4). Cf para 497 note 6 post. As to dispensing with service see also para 471 ante. The court may dispense with service on an ex parte application or at the hearing of the motion itself: see eg *Alliance and Leicester Building Society v Ghahremani* [1992] NLJR 313 (service dispensed with at the hearing). The attendance of the contemnor at the hearing does not of itself waive the necessity for service: *Mander v Falcke* [1891] 3 Ch 488; see also *Ellerton v Thirsk* (1820) 1 Jac & W 376; *Nelson v Worssam* [1890] WN 216. In practice personal service has been required in all but exceptional cases, where for instance the respondent evades service: see eg *O'Donovan v O'Donovan* [1955] 3 All ER 278n, [1955] 1 WLR 1086 (a case of civil contempt; husband remained with one of his children outside the court's jurisdiction contrary to an order of the court, and a committal order was made; service of the notice of motion was dispensed with). See also *Favard v Favard* (1896) 75 LT 664; *Gordon v Gordon* [1903] P 141; *Moran v Moran* (1959) Times, 25 September (whereabouts of a husband were unknown). As to the position where the respondent to the notice of motion is resident abroad see para 497 note 6 post.

The court may also dispense with service and make an ex parte order for committal in exceptional cases and if no other course is open either in order to uphold the authority of the court or to protect the applicant: *Wright v Jess* [1987] 2 All ER 1067 at 1071, [1987] 1 WLR 1076 at 1081, CA, per Sir John Donaldson MR (county court). It has been held that the High Court has inherent jurisdiction to make such an ex parte order where the need for relief is especially urgent or where the contempt is serious provided the person against whom committal is sought is shown to have knowledge of the committal proceedings: see *Gilbert v Gilbert* (1961) 105 Sol Jo 807; *Spooner v Spooner* (1962) 106 Sol Jo 1034; *Hipgrave v Hipgrave* [1962] P 91, [1962] 1 All ER 75; *Warwick Corp'n v Russell* [1964] 2 All ER 337, [1964] 1 WLR 613; *Underhill v Underhill* (1964) 108 Sol Jo 801; but cf *Bernstein v Bernstein* [1960] Ch 128, [1959] 2 All ER 735. The dispensation should be recorded in the committal order: *Wright v Jess* supra.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

496 Application to Queen's Bench Divisional Court

NOTE 7--See *Manchester CC v McLoughlin* (2000) Times, 5 April, CA (amendment of motion to commit someone for breach of mandatory injunction, to change the start date of the injunction from date of sealing to date of pronouncement, does not make the motion, or any subsequent committal order made on it, invalid).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(ii) Procedure/497. Application to court other than Divisional Court.

497. Application to court other than Divisional Court.

Where an application for an order of committal may be made to a court other than a Divisional Court¹, the application must be made by motion and be supported by affidavit². The notice of motion³, stating the grounds of the application⁴ and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed⁵. The court may order substituted service, or may dispense with service of the notice of motion if it thinks it just to do so⁶.

1 It would seem that the former practice, according to which an application to a court other than a Divisional Court could not be made by a litigant in person, no longer applies: *Bevan v Hastings Jones* [1978] 1 All ER 479, [1978] 1 WLR 294n, ChD. See also *De Vries v Kay* (1978) Times, 6 October; and para 496 note 2 ante. As to the former practice see *Ex p Fenn* (1834) 2 Dowl 527 per Lord Denman CJ; *Ex p Liebrand* [1914] WN 310; *Re G's Application for a Committal Order* [1954] 2 All ER 794n, [1954] 1 WLR 1116. As to the desirability of legal representation for the making of applications for committal for contempt of court see *Bevan v Hastings Jones* supra.

2 RSC Ord 52 r 4(1). An application for an order of committal in family proceedings pending in the High Court is made by summons: see the Family Proceedings Rules 1991, SI 1991/1247, r 7.2. See also *Re C (A Minor) (Contempt)* [1986] 1 FLR 578 at 586, CA, per Mustill LJ; *Mansour v Mansour* [1989] 1 FLR 418 at 420, CA, per Lord Donaldson MR. As to applications for orders of committal arising out of wardship proceedings: see *Re B (JA) (an infant)* [1965] Ch 1112, [1965] 2 All ER 168.

A motion for committal for breach of an order made on appeal by the Court of Appeal should be made to the court of first instance: *Fortescue v McKeown* [1914] 1 IR 32; *Pott v Stuteley* [1935] WN 140.

In *Dobson v Hastings* [1992] Ch 394, [1992] 2 All ER 94, the applicants were allowed to adduce oral evidence in support of the committal application, but this was described as an exceptional course, which would seldom be followed: *Dobson v Hastings* supra at 410 and 107 per Sir Donald Nicholls V-C.

3 The notice of motion should be entitled in the action, if any, in which the contempt has arisen and, where the application is against a stranger to the action, should also be entitled: 'In the matter of an application on behalf of A. B. against C. D. for an order of committal for contempt of court': see *O'Shea v O'Shea and Parnell* (1890) 15 PD 59 at 62, CA, where the full title of the application is given. See also *Re B (JA) (an infant)* [1965] Ch 1112, [1965] 2 All ER 168.

4 A notice of motion which does not state the grounds of the application is irregular and liable to be dismissed: see eg *Jelson (Estates) Ltd v Harvey* [1984] 1 All ER 12, [1983] 1 WLR 1401, CA.

5 RSC Ord 52 r 4(2). See also para 496 note 9 ante. As to whether a departure from the rules will result in the quashing of an order of committal see para 517 note 2 post.

The leave of the court is required, and may be granted, to serve a notice of motion outside the jurisdiction in proceedings in which leave is required under RSC Ord 11 r 1(1) to serve the writ or other originating process outside the jurisdiction: *Mansour v Mansour* [1989] 1 FLR 418 at 420-421, CA, per Lord Donaldson MR. See also para 496 note 9 ante.

6 See RSC Ord 65 r 4; Ord 52 r 4(3). See also para 496 text and notes 10-11 ante. As to dispensing with service see also para 471 ante. The fact that the respondent to a notice of motion is resident abroad is a factor to be taken into account in exercising the discretion to dispense with service of the notice of motion under Ord 52 r 4(3), but does not limit that discretion: *Mansour v Mansour* [1989] 1 FLR 418 at 420, CA, per Lord Donaldson MR. As to substituted service see CIVIL PROCEDURE.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

497 Application to court other than Divisional Court

NOTE 2--As to the procedure applicable to applications for an order of committal in family proceedings see *Practice Direction* [2001] 2 All ER 704.

498. Application to commit for civil contempt.

An application for committal for disobeying a judgment or order must be made to the appropriate court¹.

Where the ground of the application is disobedience to an order of the court which might be disobeyed in several ways, the particular breach alleged should be specified in the notice of motion².

In addition to service of the notice of motion, personal service of the order, judgment or process to be enforced is essential³, except in the following cases: (1) orders embodying an undertaking of a negative character⁴; (2) orders to answer interrogatories or for discovery or production of documents⁵; (3) where an order for substituted service has been made⁶; (4) where the court has dispensed with service of a prohibitory order⁷.

The court will stay an application to commit for contempt of court pending the outcome of criminal proceedings arising out of the same facts if it considers that justice so requires⁸.

A contempt motion may be dismissed for want of prosecution⁹.

1 See *Ex p Heston and Isleworth Borough Council* (1964) 108 Sol Jo 920, DC. As to the appropriate court see RSC Ord 52 r 1; and para 493 ante. In practice, the Divisional Court of the Queen's Bench will only have jurisdiction to punish disobedience to prerogative writs and orders: see para 493 ante. As to prerogative writs and orders see para 475 ante; and JUDICIAL REVIEW vol 61 (2010) PARA 602. As to the procedure for application see paras 496-497 ante.

2 *Hipkiss v Fellows* (1909) 101 LT 701, CA; *Brammall v Mutual Industrial Corp'n* (1915) 84 LJ Ch 474; *Jelson (Estates) Ltd v Harvey* [1984] 1 All ER 12, [1983] 1 WLR 1401, CA; *Chiltern DC v Keane* [1985] 2 All ER 118 at 119-120, [1985] 1 WLR 619 at 622, CA, per Sir John Donaldson MR; *Dorrell v Dorrell* [1985] FLR 1089, CA (county court).

The notice initiating a committal application must, within the four corners of the notice itself, give the respondent sufficient information to enable him to meet the charge against him; if lengthy particulars are required they may be included in a schedule or addendum to the notice, provided they form part of the notice itself: *Harmsworth v Harmsworth* [1987] 3 All ER 816, [1987] 1 WLR 1676, CA.

3 See para 467 ante.

4 It is not clear whether personal service is required in the case of an undertaking which is positive in character: see para 482 ante. As to breach of undertakings see paras 482-483 ante.

5 See paras 470, 474 ante.

6 See para 470 ante.

7 See para 471 ante.

8 *Keeber v Keeber* [1995] 2 FLR 748 at 749, (1995) Times, 14 July, CA, per Butler-Sloss LJ (the court will stay the committal application only if it is satisfied that there is a real risk of serious prejudice which might lead to injustice). See also *Jefferson Ltd v Bhetcha* [1979] 2 All ER 1108 at 1113, [1979] 1 WLR 898 at 905, CA, per Megaw LJ; *H v C (Contempt and Criminal Proceedings)* [1993] 1 FCR 1 at 3, [1993] 1 FLR 787 at 789, CA, per Neill LJ. The burden of proof is on the party seeking the stay: *Jefferson Ltd v Bhetcha* supra at 1113 and 905 per Megaw LJ. See also *Keeber v Keeber* supra. The Court of Appeal has emphasised the importance of dealing with contempt proceedings swiftly and decisively: see *Szczepanski v Szczepanski* [1985] FLR 468, [1984] Fam Law 120, CA; *Caprice v Boswell* (1985) 149 JP 703, [1985] Fam Law 52, CA.

9 *Japan Capsule Computers (UK) Ltd v Sonic Games Sales* [1988] FSR 256 at 260-261, CA, per Fox LJ.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(ii) Procedure/499. Application for writ of sequestration.

499. Application for writ of sequestration.

Application for leave to issue a writ of sequestration is by motion and is made in the division in which the judgment or order was obtained¹.

The notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ of sequestration². The fact that the requirements as to the service of a copy of the order or judgment have been complied with must be shown on the motion³. The court may order substituted service or dispense with the service of the notice of motion if it thinks it just to do so⁴.

1 See para 495 ante. As to sequestration see also para 507 post.

2 RSC Ord 46 r 5(2).

3 See RSC Ord 45 r 7; and para 467 ante. Where the party affected wilfully disobeys a prohibitory order and goes out of the jurisdiction before service on him, the court may dispense with personal service of the order disobeyed and direct the writ of sequestration to issue: see para 471 ante; and cf paras 496-497 ante. See also note 4 infra. As to practice see *R v Wigand* [1913] 2 KB 419; *Re Suarez, Suarez v Suarez* [1918] 1 Ch 176 at 194, CA, per Swinfen Eady LJ, at 197 per Warrington LJ, and at 201 per Scrutton LJ. See also *Hipkiss v Fellows* (1909) 101 LT 701, CA.

4 RSC Ord 65 r 4; Ord 46 r 5(3). See also paras 496-497 ante. As to substituted service see CIVIL PROCEDURE.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iii) The Hearing/500. Hearing in open court.

(iii) The Hearing

500. Hearing in open court.

An application for committal and for a writ of sequestration¹ for contempt of court must normally be heard in open court² but the hearing may be in private where (1) the application arises out of proceedings which relate to the exercise of the inherent jurisdiction of the High

Court with respect to minors, are brought under the Children Act 1989, or otherwise relate wholly or mainly to the maintenance or upbringing of a minor³; (2) the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder⁴; (3) the application arises out of proceedings in which a secret process, discovery or invention is in issue; (4) it appears to the court that in the interests of the administration of justice or for reasons of national security the application should be heard in private⁵.

If the application is heard in private and the court decides to make an order of committal against the person sought to be committed, it must state in open court (a) the name of the person; (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and (c) the length of the period for which he is being committed⁶.

1 See RSC Ord 46 r 5(4). As to committal see paras 502, 506 post; and as to sequestration see para 507 post. As to procedure generally see also para 493 et seq ante; and CIVIL PROCEDURE.

2 RSC Ord 52 r 6(1).

3 See eg *Re An Infant* [1965] 2 All ER 254, [1965] 1 WLR 754. See generally CHILDREN AND YOUNG PERSONS.

4 Ie within the meaning of the Mental Health Act 1983: see the Mental Health Act 1983 s 1(2); and MENTAL HEALTH vol 30(2) (Reissue) para 402.

5 RSC Ord 52 r 6(1).

6 RSC Ord 52 r 6(2). A failure to state in open court the required particulars is an irregularity which may be remedied by the court under Ord 2 r 1 by stating the particulars in open court, subject to the discretion of the Court of Appeal to set aside the order: *Re C (A Minor)* (1988) Independent, 5 December, CA.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

500 Hearing in open court

NOTES--See *Phillips v Symes (No 3)* [2005] EWCA Civ 553, [2005] 1 WLR 2986 (contempt proceedings unfair where judge had also heard proceedings relating to a disclosure order sought against same defendant).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iii) The Hearing/501. Evidence.

501. Evidence.

Except with the leave of the court hearing the application for committal¹, no grounds may be relied on at the hearing except those set out in the statement in support of the application where the application is made to a Divisional Court², or in the notice of motion where the application is made to any other court³.

Evidence is by way of affidavit⁴ but if the person sought to be committed wishes to give oral evidence on his own behalf he is entitled to do so⁵. The defendant is not a compellable witness

in proceedings against him for criminal or civil contempt⁶, but may be ordered to file and serve before the hearing any affidavit or statement of a witness of fact on which he might wish to rely⁷. If, however, a defendant chooses to give evidence voluntarily, he cannot as of right refuse to be cross-examined⁸. The court has a discretion whether to allow cross-examination on the affidavit⁹.

Hearsay evidence is not admissible in proceedings for criminal contempt¹⁰, but is admissible in proceedings for civil contempt¹¹.

In proceedings for civil contempt, the court may take judicial notice, in determining the appropriate sanction, of previous breaches of undertakings given to the court by a contemnor¹².

It is unclear whether there is a privilege against self-incrimination in proceedings for civil contempt¹³.

The burden of proof is on the party seeking to establish that a contempt has been committed¹⁴. Contempt of court must be proved beyond reasonable doubt¹⁵. A submission of no case to answer may be made¹⁶.

1 For an indication of circumstances in which leave is likely to be granted see *Re C (A Minor) (Contempt)* [1986] 1 FLR 578 at 586-587, CA, per Mustill LJ.

2 See RSC Ord 52 rr 2, 6(3). As to application to a Divisional Court see para 496 ante.

3 See RSC Ord 52 rr 4, 6(3). As to application to any other court see para 497 ante.

4 The person sought to be committed has the right to see the applicant's evidence in reply: *Dodge v Brown* (1879) 24 Sol Jo 108. In the case of a juryman charged with misconduct it was held that the evidence of his brother jurymen was inadmissible: *R v Brown* (1907) 7 SR (NSW) 290; but see *Ex p Morris* (1907) 72 JP 5, DC. As to the admissibility of hearsay evidence see the text and notes 10-11 infra.

When the application is to enforce a judgment or order for the payment of money, including an order embodying an undertaking to pay, the affidavit must show that the case is one for which imprisonment may still be ordered, ie that the case falls within one of the exceptions to the Debtors Act 1869 s 4 (as amended) (see para 485 ante): *Oswald on Contempt* (3rd Edn) p 213.

5 RSC Ord 52 r 6(4). The rule in civil proceedings, that the judge should not call evidence himself without the consent of the parties, does not apply to a committal motion: *Yianni v Yianni* [1966] 1 All ER 231n, [1966] 1 WLR 120.

6 *Comet Products UK Ltd v Hawkex Plastics Ltd* [1971] 2 QB 67, [1971] 1 All ER 1141, CA; *Re B (A Minor) (Contempt of Court: Affidavit Evidence)* [1996] 1 WLR 627, [1996] 1 FLR 239. But cf 3 BI Com 286-288.

7 *Re B (A Minor) (Contempt of Court: Affidavit Evidence)* [1996] 1 WLR 627, [1996] 1 FLR 239. The purpose of ordering a defendant to file and serve affidavits or statements of witnesses of fact is to permit proper presentation of evidence in reply and avoid unnecessary adjournments: *Re B (A Minor) (Contempt of Court: Affidavit Evidence)* supra at 638 and 250 per Wall J. Legal advisers to respondents to committal proceedings who file evidence in answer but do not wish to put it in before the close of the applicant's case should make their position clear to the court when the evidence is filed to avoid it being read in advance by the judge: *Re B (A Minor) (Contempt of Court: Affidavit Evidence)* supra at 639 and 251-252 per Wall J.

8 *Comet Products UK Ltd v Hawkex Plastics Ltd* [1971] 2 QB 67 at 74, [1971] 1 All ER 1141 at 1144-1145, CA, per Lord Denning MR, at 75-76 and 1145-1146 per Megaw LJ, and at 77 and 1147 per Cross LJ; *Crest Homes plc v Marks* [1987] AC 829 at 858-859, [1987] 2 All ER 1074 at 1081-1082, HL, per Lord Oliver. The position may be different where the evidence consists of affidavits sworn in the course of other proceedings before the commencement of the contempt proceedings: *Re Lonrho plc* [1990] 2 AC 154 at 204, [1989] 2 All ER 1100 at 1112-1113, HL, per Lord Bridge of Harwich.

9 *Comet Products UK Ltd v Hawkex Plastics Ltd* [1971] 2 QB 67 at 74, [1971] 1 All ER 1141 at 1145, CA, per Lord Denning MR, at 75-76 and 1145-1146 per Megaw LJ, and at 77 and 1147 per Cross LJ. It appears that cross-examination will not be allowed where the court considers that it would serve no purpose, eg because it would be unlikely to establish an affirmative case beyond reasonable doubt: *Re Lonrho plc* [1990] 2 AC 154 at 204, 213-214, [1989] 2 All ER 1100 at 1112-1113, 1120, HL, per Lord Bridge of Harwich.

10 *R v Shokoya* (1992) Times, 10 June, CA (finding of contempt in summary proceedings quashed on the ground that the finding was based on hearsay evidence).

11 See the Civil Evidence Act 1995 s 1(1); and CIVIL PROCEDURE vol 11 (2009) PARA 808. See also *Savings and Investment Bank Ltd v Gasco Investments (Netherlands) BV (No 2)* [1988] Ch 422, [1988] 1 All ER 975, CA; *Garvin v Domus Publishing Ltd* [1989] Ch 335, [1989] 2 All ER 344; *Bhimji v Chatwani (No 3)* [1992] 4 All ER 912, sub nom *Bhimji v Chatwani (No 2)* [1992] 1 WLR 1158; *Re B (A Minor) (Contempt of Court: Affidavit Evidence)* [1996] 1 WLR 627 at 632, [1996] 1 FLR 239 at 244 per Wall J.

12 *Mullen v Hackney London Borough Council* [1997] 2 All ER 906, [1997] 1 WLR 1103, CA.

13 Compare the first instance decision in *Bhimji v Chatwani (No 3)* [1992] 4 All ER 912, sub nom *Bhimji v Chatwani (No 2)* [1992] 1 WLR 1158 per Knox J with the decisions in *Garvin v Domus Publishing Ltd* [1989] Ch 335, [1989] 2 All ER 344 per Walton J; *Cobra Golf Inc v Rata* [1998] Ch 109, [1997] 2 All ER 150 per Rimer J. The question did not arise for consideration in *Comet Products UK Ltd v Hawkex Plastics Ltd* [1971] 2 QB 67, [1971] 1 All ER 1141, CA; and was expressly left open by the House of Lords in *Crest Homes plc v Marks* [1987] AC 829, [1987] 2 All ER 1074, HL (see at 859 and 1082 per Lord Oliver).

14 *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 43, sub nom *A-G v Guardian Newspapers (No 3)* [1992] 1 WLR 874 at 879, DC, per Mann J, and at 46, 50 and 882-883, 886 per Brooke J; *Peach Grey & Co (a firm) v Sommers* [1995] 2 All ER 513, [1995] ICR 549, DC.

15 *Re Bramblevale Ltd* [1970] Ch 128 at 137, [1969] 3 All ER 1062 at 1063, CA, per Lord Denning MR; *A-G v Leveller Magazine Ltd* [1979] AC 440 at 469, [1979] 1 All ER 745 at 765, HL, per Lord Scarman; *R v Goult* (1982) 76 Cr App Rep 140 at 144, CA, per Lord Lane CJ; *Dean v Dean* [1987] 1 FLR 517, [1987] Fam Law 200, CA; *A-G v Newspaper Publishing plc* [1988] Ch 333 at 362, [1987] 3 All ER 276 at 294 per Sir John Donaldson MR; *A-G v Guardian Newspapers Ltd* [1992] 3 All ER 38 at 43, sub nom *A-G v Guardian Newspapers Ltd (No 3)* [1992] 1 WLR 874 at 879, DC, per Mann J, and at 46, 50 and 882-883, 886 per Brooke J; *Peach Grey & Co (a firm) v Sommers* [1995] 2 All ER 513 at 521, [1995] ICR 549 at 560, DC, per Rose LJ.

16 It is not clear whether in proceedings for civil contempt the court may put the defendant to his election as in an ordinary civil case: see *Re W (Wards) (Publication of Information)* [1989] 1 FLR 246; *Re B (A Minor) (Contempt of Court: Affidavit Evidence)* [1996] 1 WLR 627 at 635-636, [1996] 1 FLR 239 at 248-249 per Wall J; cf *Barclays De Zoete Wedd Securities Ltd v Nadir* (1992) Times, 25 March.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

501 Evidence

NOTES 6, 8, 9--*Comet Products UK Ltd*, cited, applied in *Great Future International Ltd v Sealand Housing Corpn* [2004] EWHC 124 (Ch), (2004) Times, 1 March.

NOTE 11--See also *Wear Valley DC v Robson* [2008] EWCA Civ 1470, [2009] HLR 465, [2008] All ER (D) 135 (Nov).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/A. CRIMINAL CONTEMPT/502. Committal.

(iv) Power of Court to Punish Offender

A. CRIMINAL CONTEMPT

502. Committal.

In deciding whether a contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender¹. The intention with which the act complained of is done is a material factor in determining what punishment, if any, is appropriate². An immediate custodial sentence is the only appropriate sentence to impose upon a person who interferes with the administration of justice, unless the circumstances are wholly exceptional³.

The order for committal should show on the face of it the nature of the contempt⁴.

An order for committal must be for a fixed term, which must not on any occasion exceed two years in the case of committal by a superior court⁵, or one month in the case of committal by an inferior court⁶. The court may order the earlier discharge of a contemnor⁷.

1 *R v Thomson Newspapers Ltd, ex p A-G* [1968] 1 All ER 268 at 269-270, [1968] 1 WLR 1 at 4, DC, per Lord Parker CJ. Examples of cases in which an immediate custodial sentence has been held to be appropriate are: *R v Harbax Singh* [1979] QB 319 at 326, [1979] 1 All ER 524 at 528, CA, per Roskill LJ, (defendant released on bail becoming incapable through drink of appearing at court when due to surrender to bail); *R v Newbury Justices, ex p Pont* (1983) 78 Cr App Rep 255, sub nom *R v Newbury Justices, ex p du Pont* [1984] Crim LR 230, DC (serious disturbance in a magistrates' court interrupting the business of the court while the court was sitting); *R v Moran* (1985) 81 Cr App Rep 51, CA (refusal by a witness to testify where the witness was a co-accused); *R v Montgomery* [1995] 2 All ER 28, [1995] 2 Cr App Rep 23, CA (refusal by a witness to testify; guidance given on sentencing). See also para 406 text and note 1 ante.

2 See *A-G v Times Newspapers Ltd* [1974] AC 273 at 298, [1973] 3 All ER 54 at 63, HL, per Lord Reid. In committing a person to prison for contempt regard should be paid to the sentence which would have been given for a first criminal offence: *Leslie Knight Advertising and Associates Ltd v Deerhorn Brokers Ltd* (1968) 112 Sol Jo 759, [1969] Crim LR 26, CA.

3 *R v Owen* [1976] 3 All ER 239, [1976] 1 WLR 840, CA; *R v Montgomery* [1995] 2 All ER 28, [1995] 2 Cr App Rep 23, CA.

4 *R v Lambeth County Court Judge and Jonas* (1887) 36 WR 475, DC; *McIlraith v Grady* [1968] 1 QB 468, [1967] 3 All ER 625, CA. The absence of the information does not in every case invalidate the order: see *Ex p Van Sandau* (1846) 1 Ph 605; *Ex p Fernandez* (1861) 10 CBNS 3; *Re M'Alleece* (1873) IR 7 CL 146. See also para 518 note 1 post.

5 'Superior court' means the Court of Appeal, the High Court, the Crown Court, the Courts-Martial Appeal Court, the Restrictive Practices Court, the Employment Appeal Tribunal and any other court exercising in relation to its proceedings powers equivalent to those of the High Court, and includes the House of Lords in the exercise of its appellate jurisdiction: Contempt of Court Act 1981 s 19. For the purposes of s 14(1), (2), (2A), (4), (4A), the county court is treated as a superior court and not as an inferior court: s 14(4A) (sic) (added by the County Courts (Penalties for Contempt) Act 1983 s 1). This reverses the effect of *Peart v Stewart* [1983] 2 AC 109, [1983] 1 All ER 859, HL. It seems that the Contempt of Court Act 1981 s 14(4A) was numbered in error, the number having already been used: see para 505 note 8 post.

6 See *ibid* s 14(1). See also *Re R (A Minor) (Contempt: Sentence)* [1994] 2 All ER 144 at 147, [1994] 1 WLR 487 at 493, CA, per Sir Thomas Bingham MR. The Contempt of Court Act s 14(1) applies in any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal: see s 14(1). Cf para 506 note 7 post. As to sentencing generally see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 15 et seq.

For an example of a power to commit a person to prison for contempt of court where the period of committal is limited otherwise than by s 14(1) see the Bail Act 1976 s 6 (offence of absconding punishable either on summary conviction or as if it were a criminal contempt of court); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1199; MAGISTRATES.

Where a previously suspended committal order is activated and an immediate term of imprisonment is imposed for a further breach, the Contempt of Court Act 1981 s 14(1) applies to the cumulative term of imprisonment imposed, which must therefore not exceed two years: *Villiers v Villiers* [1994] 2 All ER 149, [1994] 1 WLR 493, CA.

Unless otherwise expressly provided, general statutory restrictions on imposing custodial sentences have no application to contempt: *Morris v Crown Office* [1970] 2 QB 114, [1970] 1 All ER 1079, CA (statutory restrictions relating to mandatory suspension of sentences under three months and to the imprisonment of young offenders held inapplicable to contempt). As to statutory restrictions on imposing custodial sentences see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 5 et seq. For an example of a provision which is expressly applied to cases of contempt see eg the Criminal Procedure (Attendance of Witnesses) Act 1965 s 3 (person who disobeys witness summons is guilty of contempt of court; punishment not to exceed three months' imprisonment); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1410.

The statutory alternatives to imprisonment (eg probation) have been held to be equally inapplicable in the case of contempt of court: see *Morris v Crown Office* supra at 127 and 1085 per Davies LJ; *R v Palmer* [1992] 3 All ER 289, [1992] 1 WLR 568, CA.

For the purposes of the Powers of Criminal Courts Act 1973 s 21 (as amended) (which provides that in certain circumstances a magistrates' court on summary conviction or the Crown Court on committal for sentence or on conviction on indictment may not pass a sentence of imprisonment on a person who is not legally represented in that court and has not been previously sentenced to that punishment), 'sentence of imprisonment' does not include a committal or attachment for contempt of court: see s 21(3)(b). Committal by a magistrates' court for contempt under the Contempt of Court Act 1981 s 12 (as amended: see para 454 note 4 ante) has been held not to amount to a 'summary conviction' within the meaning of the Powers of Criminal Courts Act 1973 s 21: *R v Newbury Justices, ex p Pont* (1983) 78 Cr App Rep 255, sub nom *R v Newbury Justices, ex p du Pont* [1984] Crim LR 230, DC.

7 RSC Ord 52 r 8. See also the Contempt of Court Act 1981 s 14(1); and para 506 text and note 8 post.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

502 Committal

NOTE 3--See *R v Huggins* [2007] EWCA Crim 732, [2007] 2 Cr App Rep 107 (the judge had erred in permitting the defendant only ten minutes to be seen by a representative).

NOTE 5--Definition of 'superior court' amended: Contempt of Court Act 1981 s 19 (amended by Constitutional Reform Act 2005 Sch 9 para 35(3), Sch 18 Pt 5; Armed Forces Act 2006 Sch 16 para 91).

NOTE 6--1973 Act s 21 now Powers of Criminal Courts (Sentencing) Act 2000 s 83.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/A. CRIMINAL CONTEMPT/503. Suspension of committal order.

503. Suspension of committal order.

The court by which an order of committal is made may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify¹. Where execution of an order of committal is suspended, unless the court otherwise directs, the applicant for the order of committal must serve on the person against whom it was made a notice informing him of the making and terms of the order of suspension².

1 RSC Ord 52 r 7(1). The discretionary power to suspend execution of a committal order derives from common law and not from the statutory provisions relating to the suspension of sentences of imprisonment (ie the Powers of Criminal Courts Act 1973 s 22 (as amended)), which provisions have no application to committals for contempt: *Morris v Crown Office* [1970] 2 QB 114, [1970] 1 All ER 1079, CA; *Lee v Walker* [1985] QB 1191, [1985] 1 All ER 781, CA. A county court has like powers to suspend a committal order as the High Court: *Lee v Walker* supra. Where a committal order is suspended subject to the contemnor's compliance with a condition, imprisonment is not the inevitable consequence of a breach of that order; the court has a discretion to do what is just in all the circumstances: *Re W (B) (an infant)* [1969] 2 Ch 50, [1969] 1 All ER 594, CA.

2 RSC Ord 52 r 7(2).

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

503 Suspension of committal order

NOTE 1--1973 Act s 22, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 118, repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

As to the factors which the court ought to consider when determining whether to suspend a sentence imposed in course of family proceedings see *Harris v Harris* [2001] EWCA Civ 1645, [2002] 1 All ER 185.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/A. CRIMINAL CONTEMPT/504. Fines and security for good behaviour.

504. Fines and security for good behaviour.

The court may, as an alternative or in addition to committing a contemnor¹, impose a fine or require security for good behaviour².

There is no statutory limit to the amount of a fine which a superior court³ can impose⁴. In any case where an inferior court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine must not on any occasion exceed £2,500⁵.

Payment of a fine for contempt of court imposed by a superior court⁶, other than the Crown Court, the criminal division of the Court of Appeal or the House of Lords on appeal from that division, may be enforced upon the order of the court in like manner as a judgment of the High Court for the payment of money or in like manner as a fine imposed by the Crown Court⁷.

1 Ie a person guilty of contempt of court or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court: RSC Ord 52 r 9. As to committal see para 502 ante.

2 See RSC Ord 52 r 9. For an example of an order that a respondent should give security for good behaviour see *R v Castro, Skipworth's Case* (1873) LR 9 QB 230 at 241.

3 For the meaning of 'superior court' see para 502 note 5 ante.

4 The superior courts have used their powers to impose substantial fines, either as an alternative or in addition to committal: see eg *A-G v News Group Newspapers plc* [1989] QB 110, [1988] 2 All ER 906, DC (proprietor of a newspaper fined £75,000 for publishing articles intended to prejudice the fair trial of a defendant on a charge of rape); *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA (editor and proprietor of a magazine fined £10,000 each for publishing articles intended to dissuade a litigant from pursuing a defamation action against the magazine); *A-G v British Broadcasting Corp* [1997] EMLR 76 at 83, DC, per Auld LJ (broadcaster and producer of a television programme each fined £10,000 for non-intentional contempt where the decision to publish was said to have been 'of the risk-taking variety'). As to the strict liability rule see para 410 et seq ante.

It is not clear whether there is jurisdiction to impose a fine jointly and severally upon more than one defendant, but in any event the court should consider the means of each defendant separately in determining the amount of any fine: see *McMillan Graham Printers Ltd v RR (UK) Ltd* (1993) Times, 19 March, [1993] 21 LS Gaz R 40, CA (a case involving civil contempt); and para 508 note 5 post.

5 Contempt of Court Act 1981 s 14(2) (amended by the Criminal Justice Act 1991 s 17(3)(a), Sch 4 Pt I). A fine imposed under the Contempt of Court Act 1981 s 14(2) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: s 14(2A) (added by the Criminal Justice Act 1991 Sch 4 Pt V para 4; and substituted by the Criminal Justice Act 1993 s 65(3), Sch 3 para 6(5)). Similarly, a fine imposed by a magistrates' court under the Contempt of Court Act 1981 s 12(2) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: s 12(2A) (added by the Criminal Justice Act 1991 Sch 4 Pt V para 4; and substituted by the Criminal Justice Act 1993 Sch 3 para 6(5)). This reverses, in relation to the payment of a fine, the effect of *R v Newbury Justices, ex p Pont* (1983) 78 Cr App Rep 255, sub nom *R v Newbury Justices, ex p du Pont* [1984] Crim LR 230, DC: see para 502 note 6 ante.

6 For the purposes of the Contempt of Court Act 1981 s 16 the county court is not a superior court: see para 502 note 5 ante.

7 Ibid s 16(1), (4). The Fines Act 1833 does not apply to such a fine: Contempt of Court Act 1981 s 16(5).

Where payment of a fine imposed by any court falls to be enforced in like manner as a judgment of the High Court for the payment of money, the court must, if the fine is not paid in full forthwith or within such time as the court may allow, certify to Her Majesty's Remembrancer the sum payable, and Her Majesty's Remembrancer must thereupon proceed to enforce payment of that sum as if it were due to him as a judgment debt: s 16(2). Where payment of a fine imposed by any court falls to be enforced in like manner as a fine imposed by the Crown Court, the Powers of Criminal Courts Act 1973 ss 31, 32 apply as they apply to a fine imposed by the Crown Court: Contempt of Court Act 1981 s 16(3). As to the enforcement of a fine imposed by the Crown Court see SENTENCING AND DISPOSITION OF OFFENDERS VOL 92 (2010) PARAS 159, 160. As to Her Majesty's Remembrancer see COURTS.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

504 Fines and security for good behaviour

TEXT AND NOTE 7--Contempt of Court Act 1981 s 16(4) amended: Constitutional Reform Act 2005 Sch 9 para 35(2).

NOTE 7--Fines Act 1833 repealed: 2005 Act Sch 17 para 1, Sch 18 Pt 4.

1973 Act ss 31, 32 now Powers of Criminal Courts (Sentencing) Act 2000 ss 139, 140.

505. Other remedies.

As a further alternative to ordering committal¹, the court may, in its discretion, adopt the more lenient course of granting an injunction to restrain repetition of the act of contempt². The court may also penalise a party in contempt by ordering him to pay the costs of the application, either in addition to or instead of any other punishment³.

In the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to prison for contempt of court, the superior courts⁴ have the same power to make a hospital order or guardianship order⁵, or an interim hospital order⁶, as the Crown Court would have⁷ in the case of a person convicted of an offence⁸.

1 As to the imposition of a fine or the requirement of security for good behaviour as an alternative to committal see para 504 ante. As to committal see para 502 ante.

2 See *Brook v Evans* (1860) 29 LJ Ch 616; *Coleman v West Hartlepool Rly Co* (1860) 8 WR 734; *Plimpton v Spiller* (1876) 4 ChD 286, CA; *Mackett v Herne Bay Comrs* (1876) 24 WR 845; *Bowden v Russell* (1877) 46 LJ Ch 414; *Kitcat v Sharp* (1882) 52 LJ Ch 134; *Guiding v Morel Bros, Cobbett & Sons Ltd* (1888) 4 TLR 198; *Cronmire v Daily Bourse Ltd* (1892) 9 TLR 101; *J & P Coats v Chadwick* [1894] 1 Ch 347. The injunctions may be granted against a person not a party to the action: *Lewis v James* (1887) 3 TLR 527. But cf *Elliot v Klinger* [1967] 3 All ER 141 at 144, [1967] 1 WLR 1165 at 1166 per Stamp J.

An injunction may also be granted to restrain a contempt before it has been committed: see eg *A-G v Times Newspapers Ltd* [1974] AC 273, [1973] 3 All ER 54, HL; *Peacock v London Weekend Television plc* (1985) 150 JP 71, CA; *Coe v Central Television* [1994] EMLR 433, (1993) Independent, 11 August, CA.

As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

An undertaking in damages is never sought from nor given by the Attorney General in a case in which he is seeking to uphold the administration of justice: *A-G v News Group Newspapers Ltd* [1987] QB 1 at 16, [1986] 2 All ER 833 at 842, CA, per Sir John Donaldson MR.

3 For an example of such an order see *Re A-G's Application, A-G v Butterworth* [1963] 1 QB 696, [1962] 3 All ER 326, CA. As to costs see para 510 post.

4 For the meaning of 'superior court' see para 502 note 5 ante.

5 Ie under the Mental Health Act 1983 s 37: see MENTAL HEALTH vol 30(2) (Reissue) para 486 et seq.

6 Ie under ibid s 38: see MENTAL HEALTH vol 30(2) (Reissue) para 491.

7 Ie under ibid s 37 or s 38 as applicable: see MENTAL HEALTH vol 30(2) (Reissue) para 486 et seq.

8 Contempt of Court Act 1981 s 14(4) (amended by the Mental Health Act 1983 s 148, Sch 4 para 57(a); and the Mental Health (Amendment) Act 1982 s 65(1), Sch 3 para 59(a)). Where there is reason to suspect that a person who could be committed to prison for contempt of court is suffering from mental illness or severe mental impairment the superior courts have the same power as the Crown Court to make an order under the Mental Health Act 1983 s 35 (remand for report on accused's mental condition: see MENTAL HEALTH vol 30(2) (Reissue) para 489); Contempt of Court Act 1981 s 14(4A) (added by the Criminal Justice Act 1982 s 65(1), Sch 3 para 60; amended by the Mental Health Act 1983 Sch 4 para 57(b)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 332.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

505 Other remedies

TEXT AND NOTE 4--References to mental illness or severe mental impairment now to mental disorder within the meaning of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) PARA 402): Contempt of Court Act 1981 s 14(4), (4A) (amended by Mental Health Act 2007 Sch 1 para 19).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/B. CIVIL CONTEMPT/506. Committal.

B. CIVIL CONTEMPT

506. Committal.

The power to order committal for civil contempt is a power to be exercised with very great care¹. The court will not order committal where the contempt is of a minor or technical nature².

There is no power to detain or remand in custody a contemnor after being found in contempt pending sentence³, except in cases of contempt in the face of the court⁴ or where there is reason to suspect that the contemnor is suffering from mental illness or severe mental impairment⁵.

The order for committal for a civil contempt must be for a fixed term, which must not on any occasion exceed two years in the case of committal by a superior court⁶, or one month in the case of an inferior court⁷. The court may order the earlier discharge of a contemnor⁸, but it may not substitute a longer sentence after the sentence has been imposed⁹.

The length of term should be commensurate with the seriousness of the contempt¹⁰. Consecutive sentences may be imposed for different contempts¹¹, but the court may not sentence a contemnor more than once for a single contempt¹².

The order of committal must state with sufficient particularity the nature of the contempt which the court has found proved¹³, and must be served promptly on the contemnor¹⁴.

Where the order of committal is suspended¹⁵ and the contemnor is subsequently in breach of the terms of the suspension, the court has a discretion whether to order the imprisonment of the contemnor¹⁶.

1 See eg *Gay v Hancock* (1887) 56 LT 726 at 727; *Wilson v Raffalovich* (1881) 7 QBD 553 at 561, CA. See further para 465 ante. For particular considerations arising in relation to committal for breach of an injunction or undertaking in matrimonial proceedings see *Ansah v Ansah* [1977] Fam 138, [1977] 2 All ER 638, CA; *Churchard v Churchard* [1984] FLR 635 at 638, CA, per Ormrod LJ; *George v George* [1986] 2 FLR 347, CA; *Goff v Goff* [1990] FCR 10, CA; *Re M (Minors) (Access: Contempt: Committal)* [1991] 1 FLR 355 at 358, CA, per Butler-Sloss LJ; *G v G (Contempt: Committal)* [1992] 2 FCR 145 at 148, CA, per Thorpe J; *Jones v Jones* [1993] 2 FCR 82 at 86, CA, per Russell LJ.

Although it has been said that an application to commit for civil contempt is in the nature of a criminal charge and that the rules relating to criminal charges are therefore applicable (*Comet Products UK Ltd v Hawtex Plastics Ltd* [1971] 2 QB 67, [1971] 1 All ER 1141, CA), the true position appears to be that the court will apply the rules relating to criminal charges by analogy to the extent necessary to do justice: see eg *Irtelli v Squatriti* [1993] QB 83, [1992] 3 All ER 294, CA (on an appeal from proceedings for civil contempt, the Court of Appeal applied by analogy the rules governing the admission of fresh evidence in criminal cases); and para 517 note 3 post. See also 501 ante. A defendant must be given the opportunity to present his case properly before an order of committal is made: *Duo v Duo* [1992] 3 All ER 121, [1992] 1 WLR 611, CA.

2 See eg *Stark v Stark and Hitchins* [1910] P 190, CA; *Marshall v Marshall* (1966) 110 Sol Jo 112, CA; *Smith v Smith* [1988] 1 FLR 179 at 181, CA, per Sir John Donaldson MR. Breach of an order or undertaking does not automatically, or even normally, lead to committal: *Smith v Smith* supra at 181 per Sir John Donaldson MR.

3 *Delaney v Delaney* [1996] QB 387 at 400-401, [1996] 1 All ER 367 at 377, CA, per Sir Thomas Bingham MR (where a sentencing judge is uncertain as to what sentence he should impose, he can impose a sentence at the top end of the appropriate bracket while at the same time directing that the matter be restored for further hearing at the end of a suitable period; and at that hearing the judge may (1) affirm the original order and leave the contemnor in prison, subject to his right to make further applications to purge; (2) order the immediate release of the contemnor; or (3) indicate a future date at which the contemnor would be released, subject again to the right of the contemnor to make further application to purge in the interim). See also *Re S & A Conversions Ltd* (1988) 4 BCC 384, [1988] NLJR 169, CA.

4 *Delaney v Delaney* [1996] QB 387 at 401, [1996] 1 All ER 367 at 377, CA, per Sir Thomas Bingham MR. As to contempt in the face of the court see para 406 et seq ante.

5 See the Contempt of Court Act 1981 s 14(4A) (as added and amended): para 505 note 8 ante; and MENTAL HEALTH. See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 335.

6 For the meaning of 'superior court' see para 502 note 5 ante. For an instance of a committal for the maximum term of two years for civil contempt see *Burton v Winters* [1993] 3 All ER 847, [1993] 1 WLR 1077, CA.

7 See the Contempt of Court Act 1981 s 14(1). Section 14(1) applies to civil contempts as it does to criminal contempts: see *Linnett v Coles* [1987] QB 555 at 558, [1986] 3 All ER 652 at 654, CA, per Lawton LJ. See also *Westcott v Westcott* [1985] FLR 616 at 617, CA, per Stephen Brown LJ.

As to the application of the Contempt of Court Act 1981 s 14(1) where a cumulative term of imprisonment is imposed see para 502 note 6 ante.

8 The court has an inherent power to order the earlier discharge of a contemnor, for example when he purges his contempt, which power is given statutory recognition: see *ibid* s 14(1); and *Enfield London Borough Council v Mahoney* [1983] 2 All ER 901, [1983] 1 WLR 749, CA. See also RSC Ord 52 r 8; and para 502 text and note 7 ante. The court may order the earlier discharge of a contemnor who has not purged his contempt: *Enfield London Borough Council v Mahoney* supra. See also *Re Barrell Enterprises* [1972] 3 All ER 631 at 639, [1973] 1 WLR 19 at 27, CA, per Russell LJ.

9 *Westcott v Westcott* [1985] FLR 616, CA (judge purporting to substitute a sentence of nine days for one of seven days).

10 See eg *M v M (Contempt: Committal)* [1992] 1 FCR 317, CA; *A v D (Contempt: Committal)* [1993] Fam Law 519, CA; *Hudson v Hudson* [1995] 2 FLR 72, CA. Account should be taken of the previous character of the offender: *Leslie Knight Advertising and Associates Ltd v Deerhorn Brokers Ltd* (1968) 112 Sol Jo 759, [1969] Crim LR 26, CA; *Hudson v Hudson* supra. See also *Re Davies* (1888) 21 QBD 236; *Yager v Musa* [1961] 2 QB 214, [1961] 2 All ER 561, CA; *Re Barrell Enterprises Ltd* [1972] 3 All ER 631, [1973] 1 WLR 19, CA; *Danchevsky v Danchevsky* [1975] Fam 17, [1974] 3 All ER 934, CA; *Pospischal v Phillips* (1988) Times, 20 January, CA (breach of Mareva injunction); *Re S & A Conversions Ltd* (1988) 4 BCC 384, [1988] NLJR 169, CA.

11 *Lee v Walker* [1985] QB 1191, [1985] 1 All ER 781, CA. Where sentences are consecutive, the 'totality' principle must be applied to ensure that the length of the term of imprisonment is proportionate to the wrongfulness of the contemnor's conduct: *Re S & A Conversions Ltd* (1988) 4 BCC 384, [1988] NLJR 169, CA. See also *Re R (A Minor) (Contempt: Sentence)* [1994] 2 All ER 144, [1994] 1 WLR 487, CA.

12 *Danchevsky v Danchevsky (No 2)* (1977) 121 Sol Jo 796, CA; *Lamb v Lamb* [1984] FLR 278, CA; *B v B (Contempt: Committal)* [1991] FCR 386 at 398, CA, per Purchas LJ; *Kumari v Jalal* [1996] 4 All ER 65, [1997] 1 WLR 97, CA. An inter partes review of a committal order made ex parte does not offend against this principle: *B v B (Contempt: Committal)* supra at 398 per Purchas LJ. However, it seems that the court may not increase the sentence at the inter partes review: *Lamb v Lamb* supra at 283-284 per Kerr LJ; *Wright v Jess* [1987] 2 All ER 1067 at 1072, [1987] 1 WLR 1076 at 1082-1083, CA, per Sir John Donaldson MR, and at 1073-1074 and 1084 per Bingham LJ.

13 *Chiltern DC v Keane* [1985] 2 All ER 118 at 121, [1985] 1 WLR 619 at 623, CA, per Sir John Donaldson MR; *Harmsworth v Harmsworth* [1987] 3 All ER 816, [1987] 1 WLR 1676, CA; *Clarke v Clarke* [1990] FCR 641, CA; *O'Neil v Murray* (1990) Times, 15 October, CA; *Re M (Minors) (Access: Contempt: Committal)* [1991] 1 FLR 355, CA. See also para 517 note 2 post.

14 *M v P (Contempt: Committal)* [1993] Fam 167, [1992] 4 All ER 833, CA.

15 As to suspension of an order of committal see para 503 ante. See also *Underhill v Underhill (No 2)* (1964) 108 Sol Jo 841.

The statutory provisions relating to the suspension of sentences of imprisonment (see the Powers of Criminal Courts Act 1973 s 22 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq) have no application to committals for civil contempt: *B (BPM) v B (MM)* [1969] P 103, sub nom *B (B) v B (M)* [1969] 1 All ER 891, DC. See also para 502 note 6 ante.

16 *Re W (B) (an infant)* [1969] 2 Ch 50, [1969] 1 All ER 594, CA (the court has a discretion to do what is just in all the circumstances, including reducing the length of the sentence, substituting the payment of a fine, or ordering no punishment at all). See also *Banton v Banton* [1990] FCR 84, CA; *Villiers v Villiers* [1994] 2 All ER 149, [1994] 1 WLR 493, CA.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

506 Committal

NOTE 1--There is a right to legal representation: *Hammerton v Hammerton* [2007] EWCA Civ 248, [2007] 3 FCR 107. See also *Hale v Tanner* [2000] 1 WLR 2377, CA (issues to be considered in family proceedings); *Couzens v Couzens* [2001] EWCA Civ 992, [2001] 3 FCR 289; *Aquilina v Aquilina* [2004] EWCA Civ 504, [2004] All ER (D) 458 (Mar), CA; *Re G (a child) (contempt: committal order)* [2003] EWCA Civ 489, [2003] 1 WLR 2051 (breach of confidentiality in family proceedings); *Slade v Slade* [2009] EWCA Civ 748, [2010] 1 All ER 1231 (contempt in family proceedings in respect of same subject matter as earlier criminal proceedings).

NOTE 2--See *Adam Phones Ltd v Goldschmidt* (1999) Independent, 22 July (application for committal for trivial breach dismissed with costs).

NOTE 4--See *Wilkinson v S* [2003] EWCA Civ 95, [2003] 2 All ER 184, [2003] 1 WLR 1254.

NOTE 7--See *Griffin v Griffin* [2000] 2 FCR 302, CA (a committal order suspended for so long as the contemnor complied with another order expressed to last 'until further order' is valid even though its effect is to suspend a prison sentence indefinitely).

NOTE 10--When sentencing for breach of an injunction, the history behind the imposition of that injunction is irrelevant: *Cambridgeshire CC v D* [1999] 2 FLR 42, CA. See *A-A v B-A* [2001] 2 FLR 1, CA (sentence of 12 months' imprisonment justified for rape committed in breach of non-molestation and occupation order). See also *Gull v Gull* [2007] EWCA Civ 900, [2008] 1 FLR 232.

NOTE 15--1973 Act s 22, consolidated in Powers of Criminal Courts (Sentencing) Act 2000 s 118, repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Failure to draw up an order for suspended sentence on the correct form is a fundamental defect and not capable of cure: *Couzens v Couzens* NOTE 1.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/B. CIVIL CONTEMPT/507. Sequestration.

507. Sequestration.

A court may enforce a judgment or order¹ to do or abstain from doing a particular act by writ of sequestration². The remedy of sequestration is a drastic remedy and will only be ordered in serious and clear cases³. In practice the writ is most commonly used to enforce orders against a company or director or other officer of a company and to enforce orders in matrimonial cases⁴.

The writ is addressed to not less than four people named in the writ, known as commissioners or sequestrators, and directs them to sequester the property of the individual or corporation in contempt⁵. A writ of sequestration does not lie to enforce a judgment against the Crown⁶ or against third persons who are not parties to the suit⁷. The writ binds real property⁸ and personal property⁹ from the date of issue. The issue or service of the writ on a party indebted to the judgment debtor does not create a charge on a chose in action¹⁰.

1 A writ may also issue against a corporate body for a breach of a negative or positive undertaking: see *Stancomb v Trowbridge UDC* [1910] 2 Ch 190; *Davis v Rhayader Granite Quarries Ltd* (1911) 131 LT Jo 79.

2 RSC Ord 45 r 5(1)(i), (ii). As to sequestration see paras 495, 499 ante; and CIVIL PROCEDURE vol 12 (2009) PARAS 1269, 1313, 1380 et seq. See also *Con-Mech (Engineers) Ltd v Amalgamated Union of Engineering Workers (Engineering Section)* [1973] ICR 620, NIRC. A county court has jurisdiction to order the sequestration of the assets of a corporate body which is in contempt of court: *Rose v Laskington Ltd* [1990] 1 QB 562, [1989] 3 All ER 306, DC.

3 See para 459 ante.

4 See eg *Sansom v Sansom* (1879) 4 PD 69; *Birch v Birch* (1883) 8 PD 163; *Hipkin v Hipkin* [1962] 2 All ER 155, [1962] 1 WLR 491; *Romilly v Romilly* [1964] P 22, [1963] 3 All ER 607; *Mir v Mir* [1992] Fam 79, [1992] 1 All ER 765. See also *Goad v Amalgamated Union of Engineering Workers (Engineering Section) (No 3)* [1973] ICR 108, NIRC; *News Group Newspapers Ltd v Society of Graphical and Allied Trades 1982* [1986] ICR 716, CA.

A writ of sequestration rarely issues to enforce compliance with an order for the payment of money to another person. For instances when an order to pay money or costs has been enforced by sequestration see *Knill v Dumergue* [1911] 2 Ch 199, CA; *Re Slade, Slade v Hulme* (1881) 18 ChD 653 (damages and costs); *Willcock v Terrell* (1878) 3 ExD 323, CA (order to pay by instalments); *Capron v Capron* [1927] P 243 (alimony). A writ of sequestration may issue to enforce compliance with a Mareva injunction: *Z Bank v D1* [1994] 1 Lloyd's Rep 656 (the execution of the writ was stayed and it was ordered that the writ should lie in the office of the court for 14 days, to allow the contemnor bank an opportunity to comply with the Mareva injunction by paying a sum into a named bank account).

5 See further CIVIL PROCEDURE vol 12 (2009) PARAS 1269, 1313, 1380 et seq.

6 RSC Ord 77 r 15(1).

7 *Craig v Craig* [1896] P 171 at 174 per Gorell Barnes J.

8 *Re Rush* (1870) LR 10 Eq 442. In the case of unregistered land the writ should be registered under the Land Charges Act 1972 s 6(4) and in the case of registered land it should be registered under the Land Registration Act 1925 s 59: see CIVIL PROCEDURE vol 12 (2009) PARA 1380; LAND CHARGES vol 26 (2004 Reissue) para 658.

The court has power to order the sale of freehold property by a sequestrator: *Mir v Mir* [1992] Fam 79, [1992] 1 All ER 765.

9 *Burdett v Rockley* (1682) 1 Vern 58; *Dixon v Rowe* (1876) 35 LT 548.

10 See eg *Re Hoare, ex p Nelson* (1880) 14 ChD 41, CA; *Re Pollard, ex p Pollard* [1903] 2 KB 41, CA. See also *Guerrine v Guerrine* [1959] 2 All ER 594n, [1959] 1 WLR 760; *Bucknell v Bucknell* [1969] 2 All ER 998, [1969] 1 WLR 1204; *Eckman v Midland Bank Ltd* [1973] QB 519, [1973] 1 All ER 609, NIRC.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

507 Sequestration

NOTE 8--Land Registration Act 1925 replaced by Land Registration Act 2002: see LAND REGISTRATION.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/B. CIVIL CONTEMPT/508. Fine.

508. Fine.

The court may, as an alternative to committal or sequestration¹, impose a fine for civil contempt². There is no statutory limit to the amount of a fine which a superior court³ can impose. In any case where an inferior court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine must not on any occasion exceed £2,500⁴.

In assessing the amount of the fine, account should be taken of the seriousness of the contempt and the damage done to the public interest⁵.

Payment of a fine for contempt of court imposed by a superior court, other than the Crown Court, the criminal division of the Court of Appeal or the House of Lords, may be enforced upon the order of the court in like manner as a judgment of the High Court for the payment of money or in like manner as a fine imposed by the Crown Court⁶.

1 As to committal see para 506 ante; and as to sequestration see para 507 ante.

2 Contempt of Court Act 1981 s 14(2) (as amended: see note 4 infra); RSC Ord 52 r 9. See also *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* [1964] Ch 195, [1963] 3 All ER 493; *Rose v Laskington Ltd* [1990] 1 QB 562 at 567, [1989] 3 All ER 306 at 310, DC, per Stuart-Smith LJ. For examples of a fine imposed for civil contempt see *Re Garage Equipment Association's Agreement* (1964) LR 4 RP 491; *Re Galvanized Tank Manufacturers' Association's Agreement* [1965] 2 All ER 1003, LR 5 RP 315; *Steiner Products Ltd v Willy Steiner Ltd* [1966] 2 All ER 387, [1966] 1 WLR 986 (breach of undertaking); *Re Agreement of Mileage Conference Group Tyre Manufacturers' Conference Ltd* [1966] 2 All ER 849, [1966] 1 WLR 1137; *Re W (B) (an infant)* [1969] 2 Ch 50, [1969] 1 All ER 594, CA; *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1973] AC 15, [1972] 3 All ER 101, HL; *Re Supply of Ready Mixed Concrete* [1991] ICR 52, RPC (affd [1995] 1 AC 456, [1995] 1 All ER 135, HL).

3 For the meaning of 'superior court' see para 502 note 5 ante.

4 Contempt of Court Act 1981 s 14(2) (amended by the Criminal Justice Act 1991 s 17(3)(a), Sch 4 Pt I). A fine imposed under the Contempt of Court Act 1981 s 14(2) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: s 14(2A) (added by the Criminal Justice Act 1991 s 17(3)(e), Sch 4 Pt V para 4; and substituted by the Criminal Justice Act 1993 s 65(3)).

5 *Re Agreement of Mileage Conference Group Tyre Manufacturers' Conference Ltd* [1966] 2 All ER 849 at 862, [1966] 1 WLR 1137 at 1162-1163 per Megaw P; *Re Supply of Ready Mixed Concrete* [1991] ICR 52 at 70, 72, RPC, per Anthony Lincoln J (affd [1995] 1 AC 456, [1995] 1 All ER 135, HL).

It is not clear whether there is jurisdiction to impose a fine jointly and severally upon more than one defendant, but in any event the court should consider the means of each defendant separately in determining the amount of any fine: *McMillan Graham Printers Ltd v RR (UK) Ltd* (1993) Times, 19 March, [1993] 21 LS Gaz R 40, CA. See also para 504 note 4 ante.

6 Contempt of Court Act 1981 s 16(1), (4). See also para 504 note 7 ante.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/B. CIVIL CONTEMPT/509. Other remedies.

509. Other remedies.

The court may grant an injunction¹, in lieu of committal² or sequestration³, to restrain the commission or repetition of a civil contempt, and it may declare invalid acts done in breach of an order of the court⁴. It may also make a summary award of damages for breach of an undertaking which also constitutes a breach of contract⁵. The court may in lieu of any other penalty require the contemnor to pay the costs of the motion on an indemnity basis⁶.

In a doubtful case, the court may, instead of proceeding for contempt, make an order requiring the defendant to state whether he has complied with an undertaking⁷.

If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, the court may, besides or instead of proceeding for contempt, direct the act to be done by some person appointed for that purpose⁸.

1 It has been held that the power to grant an injunction in a case of civil contempt is exercisable by the court on its own initiative and not at the instance of the plaintiff whose proper remedy is to move to commit or to apply for a writ of sequestration (*Elliot v Klinger* [1967] 3 All ER 141 at 144, [1967] 1 WLR 1165 at 1166-1167 per Stamp J); but the procedure of applying for an injunction by a separate writ has been approved (*Acrow (Automation) Ltd v Rex Chainbelt Inc* [1971] 3 All ER 1175 at 1181, [1971] 1 WLR 1676 at 1683, CA, per Lord Denning MR).

2 *Elliot v Klinger* [1967] 3 All ER 141, [1967] 1 WLR 1165. As to committal see para 506 ante.

As to the power of the superior courts to make a hospital order or guardianship order or an interim hospital order, see the Contempt of Court Act 1981 s 14(4) (as amended); and para 505 text and note 8 ante.

3 See eg *Charles Marsden & Sons Ltd v Old Silkstone Collieries Ltd and Old Silkstone Chemical Works Ltd* (1914) 13 LGR 342. As to sequestration see para 507 ante.

4 *Clarke v Chadburn* [1985] 1 All ER 211, [1985] 1 WLR 78 (purported change of rules by trade union). See also *TDK Tape Distributor (UK) Ltd v Videochoice Ltd* [1985] 3 All ER 345, [1986] 1 WLR 141 (solicitor ordered to repay monies received in breach of Mareva injunction).

5 *Midland Marts Ltd v Hobday* [1989] 3 All ER 246, [1989] 1 WLR 1143.

6 See eg *GCT (Management) Ltd v Laurie Marsh Group Ltd* [1973] RPC 432. As to costs see para 510 post.

⁷ *Kangol Industries Ltd v Alfred Bray & Sons Ltd* [1953] 1 All ER 444.

8 See RSC Ord 45 r 8; the Supreme Court Act 1981 s 39; and *Mir v Mir* [1992] Fam 79, [1992] 1 All ER 765. See also *Howarth v Howarth* (1886) 11 PD 95 at 99-100, CA, per Cotton LJ.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

509 Other remedies

NOTE 5--See also *Parker (t/a NBC Services) v Rasalingham (t/a Micro Tec)* (2000) Times, 25 July (damages for breach of consent order).

NOTE 8--RSC Ord 45 r 8 no longer refers to an order of mandamus: see SI 2003/3361. Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/B. CIVIL CONTEMPT/510. Costs.

510. Costs.

The costs of an application for committal are in the discretion of the court, and should be asked for on the hearing of the application¹. The respondent can as a general rule only be ordered to pay costs if he has been guilty of contempt². An action is maintainable in the Queen's Bench Division to enforce an order made in the Chancery Division to pay the costs of a motion for committal³.

No order for costs should be made against the Official Solicitor where he applies for the discharge of a person who has been committed to prison for contempt of court, or appeals on behalf of such a person against the order committing him to prison, unless there has been some impropriety in or lack of justification for the making of the application⁴.

Costs of a motion for committal or sequestration⁵ may be given on the indemnity basis to the party moving, but costs on the indemnity basis cannot be given to the respondent if the motion fails⁶.

1 *Abud v Riches* (1876) 2 ChD 528; *Knight v Clifton* [1971] Ch 700, [1971] 2 All ER 378, CA.

2 *Re Emmerson, Rawlings v Emmerson* (1887) 57 LJP 1, CA. Costs may be awarded against a successful defendant in an exceptional case: see *Knight v Clifton* [1971] Ch 700, [1971] 2 All ER 378, CA.

A contempt is not punishable by way of an order for costs other than those of or occasioned by the committal hearing itself: *Weston v Central Criminal Court Courts Administrator* [1977] QB 32 at 45, [1976] 2 All ER 875 at 883, CA, per Stephenson LJ (order that solicitor pay costs thrown away by his failure to attend court or instruct counsel quashed).

3 *Seldon v Wilde* [1911] 1 KB 701, CA.

4 *Enfield London Borough Council v Mahoney* [1983] 2 All ER 901 at 908, [1983] 1 WLR 749 at 758-759, CA, per May LJ.

5 See eg *A-G v Walthamstow UDC* (1895) 11 TLR 533; *Lee v Aylesbury UDC* (1902) 19 TLR 106; *Stancomb v Trowbridge UDC* [1910] 2 Ch 190. See also *GCT (Management) Ltd v Laurie Marsh Group Ltd* [1973] RPC 432.

6 *Plating Co v Farquharson* (1881) 17 ChD 49, CA (solicitor and own client costs).

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(1) POWERS OF COURT/(iv) Power of Court to Punish Offender/B. CIVIL CONTEMPT/511. Position of party in contempt.

511. Position of party in contempt.

The general rule is that a party in contempt cannot be heard or take proceedings in the same cause until he has purged his contempt¹; nor while he is in contempt can he be heard to appeal from any order made in the cause². This is, however, subject to exceptions. Thus a party in contempt may apply to purge the contempt³, or appeal with a view to setting aside the order on which his contempt is founded⁴, and in some cases he may be entitled to defend himself when some application is subsequently made against him⁵. A plaintiff in contempt has been allowed to prosecute his action when the defendant had not applied to stay the proceedings⁶, and the proceedings will not be struck out⁷.

Even in cases where the rule is prima facie applicable, the court appears to retain a discretion whether or not to hear the party in contempt⁸, and may in its discretion refuse to hear a party only on those occasions when his contempt impedes the course of justice and there is no other effective way of enforcing his obedience⁹. In an appropriate case, the court may decide to hear submissions from the contemnor *de bene esse*¹⁰.

1 It seems that the rule, in so far as it is derived from the Court of Chancery, is limited to applications in the self same cause: see the statement of the origin of the rule in the Ordinance of Lord Bacon, cited in *Hadkinson v Hadkinson* [1952] P 285 at 295-296, [1952] 2 All ER 567 at 573-574, CA, per Denning LJ. In so far as the rule is derived from the practice of the ecclesiastical courts, the principle is that if a party is in contempt for disobeying an order and his disobedience impedes the course of justice in the suit, the court may in its discretion refuse to allow him to take active proceedings in the suit until the impediment is removed: *Hadkinson v Hadkinson* supra at 296 and 574 per Denning LJ. See also *Pyke v National Westminster Bank Ltd* (1977) Times, 10 December, per Sir Robert Megarry V-C.

2 See *Chuck v Cremer* (1846) 1 Coop temp Cott 205; *Garstin v Garstin* (1865) 4 Sw & Tr 73; *Parry v Perryman* (1838) 1 Coop temp Cott 207; *Corcoran v Corcoran* [1950] 1 All ER 495; *Hadkinson v Hadkinson* [1952] P 285, [1952] 2 All ER 567, CA. But cf *Bettinson v Bettinson* [1965] Ch 465, [1965] 1 All ER 102 (application made in another cause permitted).

3 *Vowles v Young* (1803) 9 Ves 172; *Anon* (1808) 15 Ves 174; *Wilson v Bates* (1838) 3 My & Cr 197 at 201; *Chuck v Cremer* (1846) 1 Coop temp Cott 205 (considered in *Pyke v National Westminster Bank Ltd* (1977) Times, 10 December).

4 *Gordon v Gordon* [1904] P 163, CA; *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 51, [1990] 2 All ER 1 at 14, HL, per Lord Oliver of Aylmerton. See also *Atlantic Capital Corp v Johnson* (1994) Independent, 26 September, CA.

5 *Chuck v Cremer* (1846) 1 Coop temp Cott 205; *Gordon v Gordon* [1904] P 163, CA; *Hadkinson v Hadkinson* [1952] P 285, [1952] 2 All ER 567, CA; *Pyke v National Westminster Bank Ltd* (1977) Times, 10 December. See also *Wilson v Bates* (1838) 3 My & Cr 197.

6 *Ricketts v Mornington* (1834) 7 Sim 200; *Wilson v Bates* (1838) 3 My & Cr 197 at 204; *Chatterton v Thomas* (1867) 36 LJ Ch 592; but cf *Leavis v Leavis* [1921] P 299 (court refused to hear a party's application to stay proceedings on his failure to comply with an order to give security for costs).

As to the disability of a party in contempt see further *Gordon v Gordon* [1904] P 163, CA; *Gower v Gower* [1938] P 106, [1938] 2 All ER 283. See also *Chuck v Cremer* (1846) 1 Coop temp Cott 205 (considered in *Pyke v National Westminster Bank Ltd* (1977) Times, 10 December); *Re Langworthy* (1887) 3 TLR 826, CA (disobedience to order by bankrupt, where, however, no contempt had been adjudicated).

7 *Pyke v National Westminster Bank Ltd* (1977) Times, 10 December, per Sir Robert Megarry V-C.

8 See *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 46-47, [1990] 2 All ER 1 at 11, HL, per Lord Bridge of Harwich, and at 50-51 and 14 per Lord Oliver of Aylmerton. See also *Leavis v Leavis* [1921] P 299 at 301 per Hill J; *Hadkinson v Hadkinson* [1952] P 285 at 298, [1952] 2 All ER 567 at 575, CA, per Denning LJ (cf at 289-290 and 569-570 per Romer LJ); *Clarke v Heathfield* [1985] ICR 203, CA (a case in which the defendants, who were in flagrant and continuing contempt, were sued as trustees; the Court of Appeal decided, exceptionally, to hear them because the interests of the beneficiaries were involved); *Re P (Minors)* [1991] FCR 283, CA. If the court decides to entertain and rule upon an appeal, it may not decline to hear the contemnor's counsel: *X Ltd v Morgan-Grampian (Publishers) Ltd* supra at 47 and 12 per Lord Bridge of Harwich.

9 See *Hadkinson v Hadkinson* [1952] P 285 at 298, [1952] 2 All ER 567 at 575, CA, per Denning LJ.

10 *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 38, [1990] 2 All ER 1 at 5, HL, per Lord Bridge of Harwich.

UPDATE

491-511 Powers of Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

511 Position of party in contempt

NOTES 5, 8--See also *Mubarak v Mubarik (No 2)* [2006] EWHC 1260 (Fam), [2007] 1 WLR 271 (matrimonial proceedings; non-payment of lump sum was contempt, but court allowed contemnor to participate in enforcement proceedings).

NOTES 8, 9--See *Re Swaptronics Ltd* (1998) Times, 17 August (failure to meet time limit). Also, *Grupo Torras SA v Sheikh Fahad Mohammed Al Sabah* (1999) Times, 30 March, Independent, 25 February, CA (judge had discretion to allow contemnor to admit evidence). *X Ltd v Morgan-Grampian (Publishers) Ltd*, cited, applied in *Federal Bank of the Middle East v Hadkinson* [2000] 2 All ER 395, CA.

NOTE 9--See also *Blue Sky One Ltd v Mahan Air; PK Airfinance US Inc v Blue Sky Two Ltd* [2010] EWHC 128 (Comm), [2010] All ER (D) 25 (Feb).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(2) APPEAL FROM ORDER/512. Right of appeal.

(2) APPEAL FROM ORDER

512. Right of appeal.

Before the enactment of the Administration of Justice Act 1960, the Court of Appeal had jurisdiction and power to hear and determine an appeal from an order of the High Court, or a

judge thereof, on an application for leave to issue attachment or for committal¹, but no jurisdiction to entertain an appeal from an order for attachment or committal² in a case of criminal contempt³.

The Administration of Justice Act 1960 provides a uniform procedure for appeal from any order or decision of a court⁴ in the exercise of jurisdiction to punish for contempt of court, including criminal contempt⁵. An appeal lies in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant⁶.

No appeal lies under these provisions against an order for committal for small debts made pursuant to the Debtors Act 1869⁷.

1 As to committal for civil contempt see para 506 ante. As to attachment see para 491 note 3 ante.

2 As to committal for criminal contempt see para 502 ante.

3 The right of appeal was one of the most important distinctions between criminal and civil contempts (see para 402 ante). The anomaly arose from the fact that the Criminal Appeal Act 1907 (repealed) gave no right of appeal to the Court of Criminal Appeal from cases of summary conviction; equally, no appeal could lie to the Court of Appeal since no appeal lay to that court in any criminal cause or matter (see the Supreme Court of Judicature Act 1873 s 47(1) (repealed); and the Supreme Court of Judicature (Consolidation) Act 1925 s 31(1)(a) (repealed)). The question whether an appeal lay depended on whether the order for attachment or committal was made in the exercise of a criminal jurisdiction (see eg *Ex p Woodhall* (1888) 20 QBD 832, CA; *R v Barnardo* (1889) 23 QBD 305, CA; *O'Shea v O'Shea and Parnell* (1890) 15 PD 59, CA; *Scott v Scott* [1913] AC 417, HL), and in deciding this the court had regard to the substance of the case (*O'Shea v O'Shea and Parnell* supra at 64 per Lindley LJ, cited in *Izuora v R* [1953] AC 327 at 335, [1953] 1 All ER 827 at 830, PC).

4 For these purposes, 'court' includes any tribunal or person having power to punish for contempt: Administration of Justice Act 1960 s 13(5). References to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references (1) to an order or decision of the High Court, the Crown Court or a county court under any enactment enabling that court to deal with an offence as if it were contempt of court (s 13(5)(a) (amended by the Courts Act 1971 s 56, Sch 8 Pt II para 40(2))); (2) to an order or decision of a county court, or of any court having the powers of a county court, under the County Courts Act 1984 s 14 (as amended) (penalties for assaulting officers of the court), s 92 (as amended) (penalties for rescuing goods seized in execution under any process of a county court), or s 118 (as amended) (penalties for contempt committed in the face of the court) (Administration of Justice Act 1960 s 13(5)(b) (amended by the County Courts Act 1984 s 148(1), Sch 2 Pt V para 25)); (3) to an order or decision of a magistrates' court under the Magistrates' Courts Act 1980 s 63(3) (penalties for disobeying an order of a magistrates' court, other than an order for the payment of money or to abstain from doing anything) (Administration of Justice Act 1960 s 13(5)(c) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 37)). As to orders or decisions under the County Courts Act 1984 or the Magistrates' Courts Act 1980 see respectively COURTS; MAGISTRATES.

Orders made under the Debtors Act 1869 s 5 (as amended) (see para 486 ante), provisions of the Magistrates' Courts Act 1980 (other than those mentioned above) and provisions of the County Courts Act 1984 (other than those mentioned above, and s 38 (as amended) (remedies available in county courts), s 142 (power to enforce undertakings of solicitors)) are expressly excluded from the appeal provisions of the Administration of Justice Act 1960 s 13: see the Administration of Justice Act 1960 s 13(5) (amended by the Magistrates' Courts Act 1980 Sch 7 para 37; and the County Courts Act 1984 Sch 2 Pt V para 25).

5 See the Administration of Justice Act 1960 s 13(1). The provisions of the Administration of Justice Act 1960 s 13 (as amended) extend to contempts committed in the face of the court: see *Morris v Crown Office* [1970] 2 QB 114, [1970] 1 All ER 1079, CA; *Weston v Central Criminal Court Courts Administrator* [1977] QB 32, [1976] 2 All ER 875, CA. In relation to any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (see note 4 supra), the Administration of Justice Act 1960 s 13 (as amended) has effect in substitution for any other enactment relating to appeals in civil or criminal proceedings: s 13(1). See also *Re Rudkin-Jones (a bankrupt), ex p Bankrupt v Trustee of the Property of the Bankrupt* [1964] 3 All ER 750, [1964] 1 WLR 1470, DC.

An appeal lies in the case of criminal contempts against both conviction and sentence. As to the role of the Official Solicitor see para 522 note 1 post.

6 Administration of Justice Act 1960 s 13(2). Although the intention of this provision would appear to be that an applicant should only have the right to appeal in respect of an application for committal or attachment whilst the defendant may appeal in any case, the Court of Appeal has held that its true meaning is that the right to appeal may be exercised by an applicant in any case where the court's jurisdiction to punish for contempt of court was invoked by application, in contrast to those cases where there was no application but the court acted

of its own motion (for example where there was contempt in the face of the court); it is therefore not limited to cases in which the application which it is sought to appeal was for committal or attachment, and may be exercised by a legal person, which is incapable of being committed or attached: *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA. See also *Hoffman-La Roche & Co, A-G v Sieczko* [1968] RPC 460 at 466, CA, per Harman LJ; *Lenton v Tregoning* [1960] 1 All ER 717, [1960] 1 WLR 333, CA; *Wilson v Webster* [1998] 16 LS Gaz R 23, CA (the applicant in committal proceedings may apply to the Court of Appeal for redetermination of the sentence passed on the contemnor, although the jurisdiction will be exercised only in exceptional circumstances). As to procedure on appeal, and the court to which an appeal lies, see paras 513-515 post.

7 See the Administration of Justice Act 1960 s 13(5) (as amended: see note 4 supra). As to the Debtors Act 1869 s 5 (as amended) see para 486 ante; and COURTS.

UPDATE

512-517 Appeal from Order

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

512 Right of appeal

NOTES--As to the appropriate route of appeal following an order for committal for contempt of court see *Barnet LBC v Hurst* [2002] EWCA Civ 1009, [2002] 4 All ER 457. Permission is required to appeal against a decision not to commit a person for civil contempt: *M v M (breaches of orders: committal)* [2005] EWCA Civ 1722, [2006] 1 FLR 1154, [2006] Fam Law 259.

NOTE 4--Administration of Justice Act 1960 s 13(5)(d) added: Armed Forces Act 2006 Sch 16 para 45(3).

NOTE 5--The right of appeal under the 1960 Act s 13(1) lies against any order or decision made in the course of proceedings which might result in a conviction of and sentence for contempt: *R v Serumaga* [2005] EWCA Crim 370, [2005] 1 WLR 3366.

TEXT AND NOTE 6--Administration of Justice Act 1960 s 13(2) amended: Constitutional Reform Act 2005 Sch 9 para 13(7)(a); Armed Forces Act 2006 Sch 16 para 45(2).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(2) APPEAL FROM ORDER/513. Appeal to Court of Appeal.

513. Appeal to Court of Appeal.

An appeal lies to the Court of Appeal¹ (1) from an order or decision of a county court or any other inferior court from which appeals generally lie to the Court of Appeal²; (2) from an order or decision of a single judge of the High Court, or of any court having the powers of the High Court or of a judge of that court³; (3) from an order or decision of the Crown Court⁴.

Notice of appeal to the Court of Appeal must be served on the proper officer of the court from whose order or decision the appeal is brought, and on the party or parties who are directly affected by the appeal⁵.

In the case of appeals from a county court, notice of appeal must be served on the registrar of the county court and on the party or parties who are directly affected by the appeal⁶.

Affidavit evidence is receivable in cases of criminal, as well as civil, contempt⁷.

1 Appeals lie to the civil division of the Court of Appeal whether the contempt in question is a civil or criminal contempt, except in relation to appeals under the Administration of Justice Act 1960 s 13 from orders or decisions of the Crown Court, in which appeals lie to the criminal division of the Court of Appeal: Supreme Court Act 1981 s 53(2)(b), (3).

An appeal once heard and decided cannot be reopened save in the most exceptional circumstances: see *Re Barrell Enterprises Ltd* [1972] 3 All ER 631, [1973] 1 WLR 19, CA.

2 Administration of Justice Act 1960 s 13(2)(b) (amended by the Courts Act 1971 s 56(4), Sch 11 Pt II). See generally COURTS.

Although the Court of Appeal has jurisdiction to entertain an appeal from an order made by a district judge in a county court, it will not normally do so: *Read v King* [1997] 2 CL 5, CA. An appeal from the decision of a district judge should be made to the judge under CCR Ord 37 r 6: *Read v King* supra, applying *Director General of Fair Trading v Stuart* [1991] 1 All ER 129, [1990] 1 WLR 1500, CA.

See also *Wilson v Webster* [1998] 16 LS Gaz R 23, CA (there is no jurisdictional bar to stop an applicant in committal proceedings for contempt from applying to the Court of Appeal for redetermination of the sentence passed on a contemnor, although the court will only interfere in exceptional circumstances and if the decision of the court below is plainly wrong).

3 Administration of Justice Act 1960 s 13(2)(b) (as amended: see note 2 supra). This includes the Restrictive Practices Court (see the Restrictive Practices Court Act 1976 s 9(3)) and nominated judges under the Mental Health Act 1983 Part VII (ss 93-113) (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) para 674).

4 Administration of Justice Act 1960 s 13(2)(bb) (added by the Courts Act 1971 s 56, Sch 8 para 40(1)). The appeal lies to the criminal division of the Court of Appeal: Supreme Court Act 1981 s 53(2)(b).

5 RSC Ord 59 r 20(1).

6 RSC Ord 59 r 19(2). Where the contempt arises out of an assault on a county court bailiff, it may be that notice of appeal need not be served on that bailiff as it would seem he is not directly affected by the appeal: *Brown v Crowley* [1963] 3 All ER 655, [1963] 1 WLR 1102, CA.

7 *Brown v Crowley (No 2)* [1964] 1 All ER 72n, sub nom *Crowley v Brown* [1964] 1 WLR 147, CA.

UPDATE

512-517 Appeal from Order

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

513 Appeal to Court of Appeal

NOTES 1, 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 3--Restrictive Practices Court Act 1976 repealed: Competition Act 1998 Sch 14 Pt I.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(2) APPEAL FROM ORDER/514. Appeal to Divisional Court.

514. Appeal to Divisional Court.

An appeal from an order or decision of an inferior court (other than a county court or any other inferior court from which appeals generally lie to the Court of Appeal¹) lies to the Divisional Court of the Queen's Bench Division².

An appeal to a Divisional Court is by originating motion³. The notice of motion must state the grounds of appeal and, if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or part of that decision and, if against a part only, must specify the part⁴. Unless the court gives leave to the contrary, not more than four clear days may elapse between the date on which the order or decision appealed against was made and the day named in the notice of the originating motion for the hearing of the appeal⁵. The notice of motion must be served on the clerk or registrar of the court from whose order or decision the appeal is brought and on any party to the proceedings in which the decision was given who is directly affected by the appeal⁶. The notice must be served, and the appeal entered, not less than one clear day before the day named in the notice for the hearing of the appeal⁷.

1 As to appeals to the Court of Appeal see para 513 ante.

2 Administration of Justice Act 1960 s 13(2)(a); RSC Ord 109 r 2(1). Since the abolition of quarter sessions and certain local courts by the Courts Act 1971 (see COURTS), appeals to the Divisional Court of the Queen's Bench Division will be rare. Appeals may, however, lie to that court from committals by a coroner's court: see the Administration of Justice Act 1960 s 13(5) (as amended); and para 512 note 4 ante. As to committal by a coroner's court see CORONERS vol 9(2) (2006 Reissue) para 1019.

3 RSC Ord 55 r 3(1).

4 RSC Ord 55 r 3(2).

5 RSC Ord 109 r 2(4).

6 RSC Ord 55 r 4(1)(a). See also para 513 note 6 ante.

7 RSC Ord 109 r 2(5).

UPDATE

512-517 Appeal from Order

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

514 Appeal to [High Court]

TEXT AND NOTE 1--For 'Divisional Court of the Queen's Bench Division' read 'High Court': 1960 Act s 13(2)(a) (amended by Access to Justice Act 1999 s 64(2), Sch 15 Pt III).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(2) APPEAL FROM ORDER/515. Appeal to House of Lords.

515. Appeal to House of Lords.

An appeal lies to the House of Lords from an order or decision of a Divisional Court or the Court of Appeal, including a decision of either court on appeal under the Administration of Justice Act 1960¹.

Leave to appeal to the House of Lords is required in every case and must be obtained either from the court below or from the House of Lords itself². Where the appeal is itself against a decision on appeal, leave will only be granted if the court below certifies that a point of law of general public importance is involved³. Where the appeal is against an original order of the Divisional Court or Court of Appeal, leave may be given without such a certificate⁴.

1 Administration of Justice Act 1960 s 13(2)(c). Appeals also lie to the House of Lords from the Court of Appeal (criminal division) and the Courts-Martial Appeal Court: s 13(2)(c); Supreme Court Act 1981 s 151(5), Sch 4 para 3.

2 See the Administration of Justice (Appeals) Act 1934 s 1; the Administration of Justice Act 1960 s 1 (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1717; COURTS.

3 See the Administration of Justice Act 1960 ss 1(2), 13(4); and CIVIL PROCEDURE. See eg *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1973] AC 15, [1972] 2 All ER 1214, CA (revsd [1973] AC 15, [1972] 3 All ER 101, HL). Cf *A-G v Times Newspapers Ltd* [1973] QB 710, [1973] 1 All ER 815, CA (on appeal [1974] AC 273, [1973] 3 All ER 54, HL) where it was held that in the grant of an injunction to restrain the anticipated commission of a contempt of court, the normal rules governing an appeal from a decision of the Court of Appeal in a civil matter applied and no certificate was required.

4 See the Administration of Justice Act 1960 s 13(4). As to applications for leave to appeal to the House of Lords see s 2(1), (3); CIVIL PROCEDURE.

UPDATE

512-517 Appeal from Order

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

515 Appeal to [Supreme Court]

TEXT AND NOTES--Administration of Justice Act 1960 s 13(2)(c) further amended: Constitutional Reform Act 2005 Sch 9 para 13(7); Armed Forces Act 2006 Sch 16 para 45(2). Administration of Justice Act 1960 s 13(4) amended: Constitutional Reform Act 2005 Sch 9 para 13(7). As from 1 October 2009 (see SI 2009/1604) appellate jurisdiction of House of Lords abolished and Supreme Court of the United Kingdom established: see 2005 Act Pt 3 and COURTS.

TEXT AND NOTE 1--An appeal also lies from a decision of a single judge of the High Court: 1960 Act s 13(2)(c) (amended by Access to Justice Act 1999 s 64(4)).

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: 2005 Act Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 2--Administration of Justice (Appeals) Act 1934 s 1 repealed: 2005 Act Sch 9 para 3, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

516. Bail pending appeal.

Where the appellant is in custody for contempt¹ and wishes to appeal to the Court of Appeal, or to the House of Lords from the Court of Appeal, the Court of Appeal may order his release on his giving security² for his appearance, within ten days after the judgment of the Court of Appeal (or of the House of Lords) on the appeal is given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment³. Application must be made by motion, notice of which must be served at least 24 hours before the day named therein for the hearing on the proper officer of the court from whose order or decision the appeal is brought and on all parties to the proceedings in that court who are directly affected by the appeal⁴.

A similar power to release on bail is conferred on the High Court in the case of an appeal to a Divisional Court or to the House of Lords from a Divisional Court⁵.

1 See paras 502, 506 ante.

2 Security may be by recognisance, with or without sureties, or otherwise and for such reasonable sum as the court may fix: RSC Ord 59 r 20(2).

3 RSC Ord 59 r 20(2). Order 79 r 9(6), (6A), (6B), (8) applies in relation to a bail application under this rule: Ord 59 r 20(4). When granting bail under Ord 59 r 20 in a case of civil contempt of court, the Court of Appeal may order that the recognisance or other security to be given by the appellant or the recognisance of any surety must be given before any person authorised by virtue of the Magistrates' Courts Act 1980 s 119(1) to take a recognisance (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1182): RSC Ord 59 r 20(5). An order of the Court of Appeal granting bail under this rule must be in the prescribed form: Ord 59 r 20(5). Where in pursuance of such an order a recognisance is entered into or other security given before any person, it is the duty of that person to cause the recognisance of the appellant or any surety or, as the case may be, a statement of the other security given, to be transmitted forthwith to the clerk of the court which committed the appellant; and a copy of such recognisance or statement must at the same time be sent to the governor or keeper of the prison or other place of detention in which the appellant is detained, unless the recognisance or security was given before such governor or keeper: Ord 59 r 20(6).

4 RSC Ord 59 r 20(3).

5 RSC Ord 109 r 3(1). See also *Re W (B) (an infant)* [1969] 2 Ch 50 at 58, [1969] 1 All ER 594 at 597 per Winn LJ. RSC Ord 79 r 9(1)-(6), (8) applies in relation to a bail application under Ord 109 r 3(1): Ord 109 r 3(2).

UPDATE

512-517 Appeal from Order

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

516 Bail pending appeal

TEXT AND NOTE 5--RSC Ord 109 r 3(1) amended: SI 2009/2092.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/4. PROCEDURE AND POWERS OF COURT/(2) APPEAL FROM ORDER/517. Powers of courts on appeal.

517. Powers of courts on appeal.

The court to which an appeal is made¹ may reverse or vary the order or decision of the court below and make such other order as may be just². An appeal is by way of rehearing and a court, on appeal, may interfere with the trial court's findings of fact³.

On an appeal from a refusal to commit, the Court of Appeal will not interfere when the court of first instance has exercised its discretion, unless the court has done so on a manifestly erroneous principle⁴.

The House of Lords may exercise any of the powers of the court below or may remit the case to that court⁵.

1 See paras 512-515 ante.

2 Administration of Justice Act 1960 s 13(3); but cf the somewhat more limited power conferred on a Divisional Court by RSC Ord 55 r 7(5). See also *B (BPM) v B (MM)* [1969] P 103, sub nom *B (B) v B (M)* [1969] 1 All ER 891, DC.

The discretion provided by the Administration of Justice Act 1960 s 13(3) must be exercised in a way which in all the circumstances best reflects the requirements of justice, including not only the interests of the contemnor but also those of other parties and the interests of upholding the reputation of civil justice in general: *Nicholls v Nicholls* [1997] 2 All ER 97 at 108, [1997] 1 WLR 314 at 326, CA, per Lord Woolf MR. The Court of Appeal has given guidance on the approach which it will take in future cases: *Nicholls v Nicholls* supra at 109 and 326-327 per Lord Woolf MR. The Court of Appeal will use its powers under the Administration of Justice Act 1960 s 13(3) to modify or quash an order of the lower courts only in cases of contempt in which the contemnor has suffered injustice: *M v P (Contempt: Committal)* [1993] Fam 167 at 178-179, [1992] 4 All ER 833 at 842-843, CA, per Lord Donaldson MR; *Nicholls v Nicholls* supra at 109 and 327 per Lord Woolf MR. If the contemnor has suffered no injustice, the committal order will stand, subject to variation to take account of any procedural or technical defects: *M v P (Contempt: Committal)* supra at 179 and 842 per Lord Donaldson MR; *Nicholls v Nicholls* supra at 109 and 327 per Lord Woolf MR. The Court of Appeal may order a retrial in appropriate circumstances (*M v P (Contempt: Committal)* supra at 179 and 843 per Lord Donaldson MR); and will consider exercising its power to order a retrial unless there are circumstances which indicate that it would not be just to do so (*Nicholls v Nicholls* supra at 109 and 327 per Lord Woolf MR). For instances in which the Court of Appeal has ordered a retrial see *Aslam v Singh* [1987] 1 FLR 122, CA; *Duo v Duo* [1992] 3 All ER 121, [1992] 1 WLR 611, CA.

Earlier decisions to the effect that the Court of Appeal will use its powers under the Administration of Justice Act 1960 s 13(3) only in exceptional circumstances, or that a failure to comply in a county court with the requirements of CCR Ord 29 r 1(5) is fatal to the lawfulness of the committal, should not be followed: *M v P (Contempt: Committal)* supra at 177-179 and 842-843 per Lord Donaldson MR. It should not be necessary to revisit authorities prior to *M v P (Contempt: Committal)* supra: *Nicholls v Nicholls* supra at 108 and 326 per Lord Woolf MR.

Save in exceptional circumstances, the issue of a writ of habeas corpus ad subjiciendum is not an appropriate remedy for a contemnor who wishes to appeal against a committal order in either criminal or civil cases: *Linnett v Coles* [1987] QB 555, [1986] 3 All ER 652, CA. As to the writ of habeas corpus see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 207 et seq.

3 See eg *Hoffman-La Roche & Co, A-G v Sieczko* [1968] RPC 460, CA. On an appeal from proceedings for civil contempt, the Court of Appeal will apply by analogy the rules governing the admission of fresh evidence in criminal cases, and will admit fresh evidence where it thinks it necessary or expedient in the interests of justice to do so; the stricter rules applicable in civil cases (established in *Ladd v Marshall* [1954] 3 All ER 745, [1954] 1 WLR 1489, CA) do not apply: *Irtelli v Squatriti* [1993] QB 83, [1992] 3 All ER 294, CA. As to evidence see para 501 ante.

4 See *Jarmain v Chatterton* (1882) 20 ChD 493, CA, explaining *Ashworth v Outram (No 2)* (1877) 5 ChD 943, CA; *Bristow v Smyth* (1885) 2 TLR 36, CA. See also *Crowther v Elgood* (1887) 34 ChD 691, CA; *Re Paget, ex p Official Receiver* [1927] 2 Ch 85, CA; *Lenton v Tregoning* [1960] 1 All ER 717, [1960] 1 WLR 333, CA.

5 Administration of Justice Act 1960 s 1(4).

UPDATE

512-517 Appeal from Order

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

517 Powers of courts on appeal

TEXT AND NOTE 5--Administration of Justice Act 1960 s 1(4) amended: Constitutional Reform Act 2005 Sch 9 para 13(2)(d) (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(1) EXECUTION OF ORDER OF COMMITTAL/518. Mode of execution.

5. EXECUTION AND DISCHARGE

(1) EXECUTION OF ORDER OF COMMITTAL

518. Mode of execution.

An order of committal is executed by the tipstaff of the court under a warrant issued in pursuance of the order¹. The prisoner is taken to the appropriate prison², and remains there until an order is made for his discharge, or the sentence expires³. In the absence of the tipstaff, the court appoints the usher to act in his place⁴.

1 A warrant of committal for contempt will usually be bad unless it specifies the exact nature of the contempt: see *R v Lambeth County Court Judge and Jonas* (1887) 36 WR 475; *McIlraith v Grady* [1968] 1 QB 468, [1967] 3 All ER 625, CA. But where the contempt is insulting the court, the nature of the insult need not be specified in the warrant: *Levy v Moylan* (1850) 10 CB 189. See also para 502 ante.

The committal order is now executed on the authority of a warrant signed by the judge, or one of the judges of the court, making the order: see *Practice Note* (1961) 105 Sol Jo 136.

As to the office of tipstaff see *G v L* [1891] 3 Ch 126 at 128n.

2 Prisoners are lodged in such prisons as may from time to time be directed: see the Prison Act 1952 s 12(2); and PRISONS.

3 As to discharge see para 521 et seq post.

4 Seton's Judgments and Orders (7th Edn) p 456.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(1) EXECUTION OF ORDER OF COMMITTAL/519. Privilege from arrest.

519. Privilege from arrest.

Privilege from arrest cannot be successfully claimed by a person guilty of criminal contempt¹, nor in some cases of civil contempt accompanied by circumstances of misconduct². Where, however, a committal is ordered to compel performance of a civil obligation, and breach of the order constituting the contempt has no degree of criminality, or any defiance of the general law, privilege may be claimed³. The question whether a criminal element exists in the contempt is generally involved in the question whether privilege can be claimed. If a criminal element

does exist, there can be no privilege; in the absence of a criminal element, the decision that there is to be no imprisonment may be based either on privilege or on the practice of the court not to imprison in such a case⁴.

1 *Wellesley v Duke of Beaufort, Long Wellesley's Case* (1831) 2 Russ & M 639; *Re Ludlow Charities, Lechmere Charlton's Case* (1837) 2 My & Cr 316; *R v Castro, Onslow's and Whalley's Case* (1873) LR 9 QB 219 at 228-229; *Re Freston* (1883) 11 QBD 545, CA; *Stourton v Stourton* [1963] P 302, [1963] 1 All ER 606 (a case of attachment).

2 See *Re Freston* (1883) 11 QBD 545, CA (disobedience by a solicitor to an order made against him as officer of the court); *Re Dudley* (1883) 12 QBD 44, CA; *Re Grey* [1892] 2 QB 440, CA. See also *Re Gent, Gent-Davies v Harris* (1888) 40 ChD 190 (disobedience by a receiver who was also a member of Parliament to an order against him to pay his balance into court); *Re Hunt* [1959] 2 QB 69, [1959] 2 All ER 252, CA (disobedience to an order of the court to attend before an examiner); but cf *Re Armstrong, ex p Lindsay* [1892] 1 QB 327 (member of Parliament was held privileged from arrest when he failed to submit to examination touching a bankrupt's affairs). See further *Seldon v Wilde* [1911] 1 KB 701, CA; *Scott v Scott* [1913] AC 417 at 459-460, HL, per Lord Atkinson.

Since the remedy of attachment is obsolete and never, in recent practice, issued without leave and since the court will not in practice inflict imprisonment where no element of crime or misconduct exists, the question of privilege on an application for committal for contempt seldom arises: see *Re Hunt* supra at 77 and 256 per Romer LJ.

3 See *Stourton v Stourton* [1963] P 302 at 310, [1963] 1 All ER 606 at 610 per Scarman J; *Re Freston* (1883) 11 QBD 545, CA; *Re Armstrong, ex p Lindsay* [1892] 1 QB 327. See also *Young v Young* (1896) 12 TLR 503.

Privilege from arrest may be claimed by members of Parliament, witnesses going to or coming from courts of justice in obedience to subpoenas, and solicitors and barristers attending courts to discharge their professional duties: see *Re Freston* supra at 552 per Brett MR. See further LEGAL PROFESSIONS VOL 65 (2008) PARA 738; LEGAL PROFESSIONS VOL 66 (2009) PARA 1142; PARLIAMENT VOL 78 (2010) PARA 1085. See also CIVIL PROCEDURE VOL 11 (2009) PARA 977.

4 See *Young v Young* (1896) 12 TLR 503. See also *Robson v Biggar* [1908] 1 KB 672, CA.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(1) EXECUTION OF ORDER OF COMMITTAL/520. Prison treatment.

520. Prison treatment.

Persons committed for contempt of court, whether indefinitely or for a fixed term, are treated under special prison rules¹. They are neither placed in association with convicted prisoners nor compelled to wear prison dress². They may send and receive as many letters and receive as many visits as they wish within such limits and subject to such conditions as may be directed³. There are provisions for their early release⁴.

1 See the Prison Act 1952 s 47(4) (as amended); and PRISONS. As to prison rules generally see the Prison Rules 1964, SI 1964/388 (as amended); and PRISONS.

2 See *ibid* r 3(2) (as substituted); r 20(1) (as substituted); r 63 (as amended). If willing to do so, persons committed for contempt are permitted to associate with other prisoners: see r 63(2). See further PRISONS.

3 See *ibid* r 34(1); and PRISONS.

4 Under the Criminal Justice Act 1991, there is a modified scheme of early release for persons committed for contempt: see s 45 (prospectively repealed by the Crime (Sentences) Act 1997 s 56(2), Sch 6). However, as from a day to be appointed, the general provisions as to early release contained in the Crime (Sentences) Act 1997 Pt II Ch I (ss 8-27) (with the exception of the provisions relating to supervision after release) apply to persons committed for contempt as they apply to persons serving equivalent sentences of imprisonment, rather

than that modified scheme: see s 23. At the date at which this volume states the law no such day had been appointed. As to remission generally see PRISONS.

UPDATE

520 Prison treatment

NOTES 1-3--SI 1964/388 replaced: Prison Rules 1999, SI 1999/728 (amended by SI 2009/3082).

NOTE 4--1997 Act ss 9, 9A, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 ss 87, 88, repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(2) DISCHARGE OF PERSON COMMITTED/521. Discharge without order.

(2) DISCHARGE OF PERSON COMMITTED

521. Discharge without order.

It is the duty of the person who has custody of the prisoner to discharge him at the end of the term¹.

Under the Debtors Act 1869 no person may be imprisoned for a longer period than one year², and if the prisoner is not sooner discharged by order of the court he must be discharged at the end of a year without any order³.

In any other case, an application for discharge must be made to the court by the prisoner or by someone on his behalf⁴.

1 *Moone v Rose* (1869) LR 4 QB 486; *Re Edwards, Brooke v Edwards* (1882) 21 ChD 230. As to the term see paras 502, 506 ante.

If a contemnor committed for a civil contempt is discharged from custody by mistake, there is no jurisdiction to make a second order of committal for the same contempt: *Church's Trustee v Hibbard* [1902] 2 Ch 784, CA. The same principle would no doubt apply in the case of criminal contempt. It may be, however, that the contemnor could be retaken under the original order: see *Church's Trustee v Hibbard* supra at 792 per Mathew LJ. A person could not formally be taken in execution twice on the same judgment, even by consent (*Blackburn v Stupart* (1802) 2 East 243); but it seems that a second committal order may be made while the first remains unexecuted, provided that no further proceedings are taken under the first order (*Andrews v Walton* (1845) 1 Ph 619; *Andrewes v Walton* (1849) 1 Mac & G 380 (writs of attachment)). See also *Merchant v Frankis* (1842) 3 QB 1; and para 506 ante.

2 See the Debtors Act 1869 s 4 (as amended); and para 485 ante.

3 *Re Edwards, Brooke v Edwards* (1882) 21 ChD 230.

4 See para 522 post.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(2) DISCHARGE OF PERSON COMMITTED/522. Discharge by court order.

522. Discharge by court order.

The court may, on the application of any person committed to prison for any contempt of court, discharge him¹. The application may be founded, for instance, on evidence that the prisoner has purged his contempt, or that there is an irregularity in the proceedings justifying the discharge of the order². The court on an application for discharge has power to order release at a fixed future date³.

Where an order of committal is made to vindicate the authority of the court, and the court considers that the offender has been sufficiently punished, it will discharge him without regard to the opposition of the prosecuting party⁴.

Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has been issued to enforce the judgment or order, the commissioners or sequestrators appointed by the writ may, where the thing is in the custody or power of the person committed, take possession of it as if it were the offender's property; the court may then discharge the offender giving such directions for dealing with the thing as it thinks fit⁵.

Where committal is to enforce obedience to an order of the court but it is clear that continued imprisonment will not cause the contemnor to comply with the order, the court may release him provided that he has been adequately punished for his disobedience⁶.

1 RSC Ord 52 r 8(1). As to application for discharge see para 523 post. The power of the court to order an earlier discharge is expressly preserved by the Contempt of Court Act 1981 s 14(1): see paras 502, 506 ante.

The court has a discretion to make an order for discharge in cases falling within the third and fourth exceptions of the Debtors Act 1869 s 4 (as amended) (default by trustees, etc and default by attorneys or solicitors: see para 485 heads (3), (4) ante): see the Debtors Act 1878 s 1; and para 485 ante.

Where an order for committal has been made, the Official Solicitor has authority to apply on behalf of the person committed if that person does not move the court on his own behalf: see *Churchman v Joint Shop Stewards' Committee of the Workers of the Port of London* [1972] 3 All ER 603, [1972] 1 WLR 1094, CA; *Midland Cold Storage Ltd v Turner* [1972] 3 All ER 773, [1972] ICR 230, NIRC; *Enfield London Borough Council v Mahoney* [1983] 2 All ER 901, [1983] 1 WLR 749, CA. The court may invite the Official Solicitor to instruct an amicus curiae: see eg *Delaney v Delaney* [1996] QB 387, [1996] 1 All ER 367, CA. When the Official Solicitor makes an application on behalf of a contemnor, an order for costs will not usually be made against him whether or not he is successful, unless there has been some impropriety in or lack of justification for the making of the application: *Enfield London Borough Council v Mahoney* supra at 908 and 758 per May LJ. As to the Official Solicitor see COURTS.

In the Family Division, the contemnor must be present in court to hear the outcome of any application for his release from prison, except in those cases in which the provisions of the Mental Health Act 1983 apply and in which it is considered by the solicitor conducting the application that in the particular circumstances it would not be desirable for the contemnor to attend: *Practice Direction (Family Division: Contempt of Court)* [1983] 2 All ER 1066, [1983] 1 WLR 998. As to the provisions of the Mental Health Act 1983 see generally MENTAL HEALTH.

2 For observations on purging a contempt by apology see *Johnson v Grant* 1923 SC 789 at 791 per Lord Clyde. See also *Corcoran v Corcoran* [1950] 1 All ER 495 (discharge refused); *Re Barrell Enterprises Ltd* [1972] 3 All ER 631, [1973] 1 WLR 19, CA (six months' imprisonment considered sufficient but not excessive punishment).

3 *Yager v Musa* [1961] 2 QB 214, [1961] 2 All ER 561, CA. The order should not state that no further application for discharge should be made for a fixed time: *Yager v Musa* supra; *Vaughan v Vaughan* [1973] 3 All ER 449, [1973] 1 WLR 1159, CA.

4 *Adlard v Smith* (1819) 6 Price 321. See also *North v Huber* (1861) 29 Beav 437; *Felkin v Herbert* (1864) 33 LJ Ch 294; *Re Davies* (1888) 21 QBD 236 (in this case, the contemnor had been committed for breach of an injunction, and had remained in prison for 18 months; the court of its own motion ordered his discharge on terms prohibiting the issue of any writ or summons without leave of the judge); *Brown v Crowley (No 2)* [1964] 1 All ER 72n, sub nom *Crowley v Brown* [1964] 1 WLR 147, CA.

5 RSC Ord 52 r 8(2).

6 *Re Barrell Enterprises Ltd* [1972] 3 All ER 631, [1973] 1 WLR 19, CA; *Enfield London Borough Council v Mahoney* [1983] 2 All ER 901, [1983] 1 WLR 749, CA.

UPDATE

522 Discharge by court order

TEXT AND NOTE 1--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

NOTE 1--Debtors Act 1878 s 1 amended: Statute Law (Repeals) Act 2004. As to the approach of the court when considering an application for early discharge, see *CJ v Flintshire BC* [2010] EWCA Civ 393, [2010] All ER (D) 75 (Apr).

TEXT AND NOTE 5--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(2) DISCHARGE OF PERSON COMMITTED/523. Mode of application for discharge.

523. Mode of application for discharge.

An application for discharge from custody should, if possible, be made to the tribunal which made the order for committal, but such applications may be dealt with by any judge of the division in which the order was made, if the particular judge who made it is not available. The practice is for the application to be made by motion¹. Notice of the application must be served on the opposite party². A motion to discharge a prisoner in contempt takes precedence over all other motions³. In a matrimonial suit the application may be made to a district judge when there is no judge conveniently available⁴.

1 In the Chancery Division the procedure is by way of motion, though the Official Solicitor may proceed by way of summons in an appropriate case: see *Practice Direction* [1952] WN 121. As to the Official Solicitor see COURTS.

2 *Re Evans, Evans v Noton* [1893] 1 Ch 252, CA.

3 *Ashton v Shorrock* (1880) 43 LT 530, 29 WR 117; *Bowden v Yoxall* [1901] 1 Ch 1 at 2, CA.

4 Family Proceedings Rules 1991, SI 1991/1247, r 7.2(2).

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(2) DISCHARGE OF PERSON COMMITTED/524. Costs.

524. Costs.

The order of discharge usually directs the contemnor to pay the costs occasioned by the contempt, but, except in cases of criminal contempt, the discharge will not be made conditional upon the payment of costs¹.

In cases of criminal contempt the order of discharge may be conditional on the payment of costs², such costs being equivalent to a fine for the contempt as well as an indemnity to the opposite party, and the Debtors Act 1869 and the Debtors Act 1878 have no application³.

1 *Jackson v Mawby* (1875) 1 ChD 86; *Re Jarvis, Ward v Jarvis* [1886] WN 118. See also *Micklethwaite v Fletcher* (1879) 27 WR 793; *Weldon v Weldon* (1885) 10 PD 72; *Ayres v Ayres* (1901) 71 LJP 18. As to costs see also para 510 ante. See further *Clarke v Smith* (1914) 48 ILT 244.

2 *Re M --* (1876) 46 LJ Ch 24, CA.

3 As to the Debtors Act 1869 and the Debtors Act 1878 see para 485 et seq ante.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(2) DISCHARGE OF PERSON COMMITTED/525. Pardon.

525. Pardon.

The prerogative of the Crown to pardon or remit sentences¹ extends to sentences for criminal contempt², although applications for a pardon in cases of criminal contempt are rarely made³. As a matter of practice, the Crown never interferes in the case of civil contempt⁴.

1 As to pardons see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 823 et seq. The introduction of a right of appeal in cases of criminal and civil contempt (see para 512 et seq ante) and the powers of discharge from custody (see para 521 et seq ante) have further reduced the importance of the prerogative in cases of contempt.

2 *Re Special Reference from Bahama Islands* [1893] AC 138, PC; *Seaward v Paterson* [1897] 1 Ch 545 at 559, CA; *Rainy v Sierra Leone Justices* (1853) 8 Moo PCC 47. See also *Phipps v Earl of Anglesea* (1721) 1 P Wms 696, where it was held that a general act of pardon could extend to contriving the marriage of a ward of court without authority.

3 For instances where a pardon was recommended see *Rainy v Sierra Leone Justices* (1853) 8 Moo PCC 47; *Re Ramsay* (1870) LR 3 PC 427.

4 *Re Special Reference from Bahama Islands* [1893] AC 138 at 145, PC.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(3) EXECUTION AND DISCHARGE OF WRIT OF SEQUESTRATION/526. Execution of writ.

(3) EXECUTION AND DISCHARGE OF WRIT OF SEQUESTRATION

526. Execution of writ.

The writ of sequestration¹ directs and authorises the sequestrators to enter on the contemnor's property and to take possession of all property liable to sequestration². The sequestrators, having taken possession of the property, are required to detain and hold it until the contempt is cleared. The property sequestered may be applied to meet the demand of the party prosecuting the writ³, but an application to the court for the sale is necessary⁴.

1 As to the writ of sequestration generally, and the execution of such a writ, see CIVIL PROCEDURE vol 12 (2009) PARAS 1269, 1313, 1380 et seq.

2 As to property liable to sequestration see CIVIL PROCEDURE vol 12 (2009) PARA 1380.

3 *Richardson v Richardson* [1989] Fam 95, [1989] 3 All ER 779.

4 See *Desbrough v Crumbey* (1729) 1 Barn KB 212. See also *Hipkin v Hipkin* [1962] 2 All ER 155, [1962] 1 WLR 491; *Mir v Mir* [1992] Fam 79, [1992] 1 All ER 765.

Halsbury's Laws of England/CONTEMPT OF COURT (VOLUME 9(1) (REISSUE))/5. EXECUTION AND DISCHARGE/(3) EXECUTION AND DISCHARGE OF WRIT OF SEQUESTRATION/527. Discharge of writ.

527. Discharge of writ.

Where the person whose property has been sequestered has purged his contempt, an order may be obtained on motion or summons for the discharge of the sequestration¹. The order of discharge directs the sequestrators to withdraw from possession, to pass their final accounts and, after retaining their costs, charges and expenses, and any payments properly made by them, to pay the balance to the contemnor².

1 As to the discharge of a writ of sequestration see CIVIL PROCEDURE vol 12 (2009) PARA 1385.

2 See eg *Goldsmith v Goldsmith* (1846) 5 Hare 123; cf *Coles v Coles* [1957] P 68, [1956] 3 All ER 542 (after writ had been issued the person whose property had been sequestered committed an act of bankruptcy but had not purged his contempt; trustee in bankruptcy not entitled to have writ discharged). The death of the contemnor does not of itself discharge the writ, which continues in force against the contemnor's personal representatives: *Burdett v Rockley* (1682) 1 Vern 58. See also *Pratt v Inman* (1889) 43 ChD 175. A writ of sequestration, once issued, may only be withdrawn by the applicant with the leave of the court: see *Showerings Ltd v Fern Vale Brewery Co Ltd* [1958] RPC 462.